

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/1. THE GENERAL LAW OF TORT  
**TORT (VOLUME 45(2) (REISSUE))**

**1. THE GENERAL LAW OF TORT**

**UPDATE**

**301-387 The General Law of Tort**

Material relating to this part has been revised and published under the title TORT vol 97 (2010).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(1) LIBEL AND SLANDER ... (4) NUISANCE AND ASSOCIATED TORTS

**2. SPECIFIC TORTS**

**(1) LIBEL AND SLANDER**

**UPDATE**

**388-424 Libel and Slander ... Nuisance and Associated Torts**

Material relating to these paragraphs has been revised and published under the title TORT vol 97 (2010).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(i) Wrongs to the Person

**(5) TRESPASS AND ASSOCIATED TORTS**

**(i) Wrongs to the Person**

**UPDATE**

**425-504 Wrongs to the Person**

Material relating to these paragraphs has been revised and published under the title TORT vol 97 (2010).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/A. TRESPASS TO LAND ... C. RESCUE, POUND-BREACH, WRONGFUL DISTRESS AND WASTE

## **(ii) Wrongs to Property**

### **A. TRESPASS TO LAND ... C. RESCUE, POUND-BREACH, WRONGFUL DISTRESS AND WASTE**

#### **UPDATE**

#### **505-541 Trespass to Land ... Rescue, Pound-breach, Wrongful Distress and Waste**

Material relating to these paragraphs has been revised and published under the title TORT vol 97 (2010).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(A) Introduction/542. Forms of action at common law.

### **D. WRONGFUL INTERFERENCE WITH GOODS**

#### **(A) INTRODUCTION**

##### **542. Forms of action at common law.**

The law on wrongful interference with goods has been extensively modified by statute. Until 1978<sup>1</sup>, two main causes of action lay for the protection of proprietary interests in goods. These were trover and detinue.

Detinue was of earlier origin. Its gist was the unlawful failure to deliver up goods when demanded<sup>2</sup>. It lay when a person wrongfully detained the goods of another, or improperly parted with possession of them<sup>3</sup>. It also lay when a bailee lost goods and could not show that the loss was without default on his part<sup>4</sup>. It was the appropriate form of action when the return of title deeds or other specific chattels was required<sup>5</sup>. It did not afford a remedy when a bailee restored goods in a damaged condition<sup>6</sup>, nor where he misused goods without causing loss or destruction.

Trover arose to provide a more extensive remedy, available in all cases where one person committed a conversion<sup>7</sup> of another person's chattel. It originated as a form of trespass on the case<sup>8</sup>. It derived its name from the concept that, and was based on the fiction that, the defendant had found the goods and afterwards converted them to his use<sup>9</sup>.

In modern times, the word 'conversion' has acquired a technical meaning. It is a common law claim which imposes strict liability for any wrongful interference with the right to possession of a chattel<sup>10</sup>. At common law<sup>11</sup>, conversion lies for any act of wilful interference with a chattel which is committed without lawful justification, is inconsistent with the right of another and operates to deprive that other of the use and possession of the chattel<sup>12</sup>. It therefore applies where one person has wrongfully appropriated the goods of another to his own use or to the use of another<sup>13</sup>, or has wrongfully deprived the owner of the use or possession of them permanently or for a substantial<sup>14</sup> or indefinite<sup>15</sup> time, or has destroyed them or changed their

quality<sup>16</sup>. By statute conversion also lies where a bailee has allowed goods to be lost or destroyed in breach of his duty to the bailor<sup>17</sup>.

1     ie the year in which the Torts (Interference with Goods) Act 1977 came into force. As to the commencement of the Torts (Interference with Goods) Act 1977 see PARA 546 post.

2     *Jones v Dowle* (1841) 9 M & W 19; *Mason v Farnell* (1844) 12 M & W 674; *Clements v Flight* (1846) 16 M & W 42; *General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd* [1963] 2 All ER 314, [1963] 1 WLR 644, CA; *Alicia Hosiery Ltd v Brown Shipley & Co Ltd* [1970] 1 QB 195 at 207, [1969] 2 All ER 504 at 510, per Donaldson J.

3     *Jones v Dowle* (1841) 9 M & W 19; *Ballett v Mingay* [1943] KB 281, [1943] 1 All ER 143, CA; *Finlayson v Taylor* (1983) 133 NLJ 720.

4     *Reeve v Palmer* (1885) 5 CBNS 84, Ex Ch (as explained in *Wilkinson v Verity* (1871) LR 6 CP 206); *Goodman v Boycott* (1862) 2 B & S 1 (title deeds). *Bullen v Swan Electric Engraving Co* (1906) 22 TLR 275 at 277, per Walton J (affd (1907) 23 TLR 258, CA); *Coldman v Hill* [1919] 1 KB 443 at 455, CA, per Scruton LJ; *Houghland v RR Low (Luxury Coaches) Ltd* [1962] 1 QB 694, [1962] 2 All ER 159, CA.

5     See eg *Goodman v Boycott* (1862) 2 B & S 1. As to the present position relating to the delivery of chattels see PARA 658 post.

6     3 Holdsworth's History of English Law 350. It seems that detinue was originally an action chiefly used against bailees: 3 Holdsworth's History of English Law 324. It was formerly considered an action ex contractu (*Danby v Lamb* (1861) 11 CBNS 423), but was later reckoned as an action founded on tort (see *Bryant v Herbert* (1878) 3 CPD 389, CA; *Ballett v Mingay* [1943] KB 281, [1943] 1 All ER 143, CA).

7     As to conversion see PARA 548 et seq post.

8     3 Holdsworth's History of English Law 350. See also CIVIL PROCEDURE.

9     *Cooper v Chitty* (1756) 1 Burr 20; *Gordon v Harper* (1796) 7 Term Rep 9; *Burroughes v Bayne* (1860) 5 H & N 296; and see PARA 661 post. 'Trover' was an old French word meaning 'to find'. 'Trover' is the name of the form of action, and 'conversion' the name of the tort; but cf the Torts (Interference with Goods) Act 1977 s 1(a) (see PARA 543 et seq post). The fictitious allegations of loss and finding were abolished by the Common Law Procedure Act 1852, which substituted an allegation that the defendant converted to his own use or wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods: see (1905) 21 LQR 43.

10    *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 685-686, [1998] 2 BCLC 659 at 671, CA, per Mummery LJ (where the proposition stated in the text was agreed by the parties and adopted by Mummery LJ).

11    There is a statutory form of conversion, as to which see the Torts (Interference with Goods) Act 1977 s 2(2); and PARA 543 et seq post.

12    *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 685-686, [1998] 2 BCLC 659 at 671, CA, per Mummery LJ (where the proposition stated in the text was agreed by the parties and adopted by Mummery LJ).

13    *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA (unlawful pledge of shares).

14    *Hiort v Bott* (1874) LR 9 Exch 86; *Hollins v Fowler* (1875) LR 7 HL 757; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA.

15    *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375. Cf *Arthur v Anker* [1997] QB 564, [1996] 3 All ER 783, CA (wheel-clamping of vehicle, parked without occupier's consent on private land; notices warning of possibility of wheel-clamping; action brought for wrongful interference with goods; it was held that no wrong was committed as vehicle owner had consented to risk of immobilisation).

16    *Richardson v Atkinson* (1723) 1 Stra 576 (drawing part of the liquor out of a vessel and filling it up with water is a conversion of the whole of the liquor); *Standring v Grundy* (1837) 6 LJ Ex 181 (seals cut off a deed); *Simmons v Lillystone* (1853) 8 Exch 431 (damage to part of timber not conversion); *M'Kewen v Cotching* (1857) 27 LJ Ex 41 (bill of exchange burnt). See also *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 181, CA, per Ackner LJ, where part of the cargo was destroyed as a result of preventative action taken by a naval vessel after the seller instructed a cargo ship to leave harbour, contrary to the orders of the maritime authority, and it was held that the seller was

liable to the buyer in conversion for the whole of the cargo removed, including the part which was destroyed. Cf *Philpott v Kelley* (1835) 3 Ad & El 106 (effect of conversion of part of property (wine) before conversion of whole on running of time).

17 See the Torts (Interference with Goods) Act 1977 s 2(2); and PARA 548 post.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 542 Forms of action at common law

NOTE 13--See also *Kuwait Airways Corp v Iraqi Airways Co (No 3)* [2002] UKHL 19, [2002] 3 All ER 209 (aircraft seized by enemy and incorporated in defendant's fleet).

NOTE 14--See *White v Withers LLP* [2009] EWCA Civ 1122, [2009] 3 FCR 435 (use of wrongly intercepted documents by solicitor sufficient to establish exercise of dominion over them).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(A) Introduction/543. Reconstitution by statute.

### 543. Reconstitution by statute.

The Torts (Interference with Goods) Act 1977 has introduced a number of important changes into the law concerned with interference with goods<sup>1</sup>. Detinue is abolished<sup>2</sup>. Conversion survives as a distinct tort but is affected by the Act in several respects<sup>3</sup>. In common with the other torts concerned with chattels (described in the Act as torts of 'wrongful interference', or 'wrongful interference with goods'<sup>4</sup>), conversion is subject to general changes in substantive law and procedure<sup>5</sup>, and is affected by new provisions enabling a bailee to dispose of uncollected goods<sup>6</sup>. The Act also contains special rules applying either to conversion alone or to conversion and trespass to goods<sup>7</sup>, and extends the scope of conversion to include wrongful loss or destruction by default of a bailee<sup>8</sup>, a form of wrong which gave rise to an action for detinue at common law<sup>9</sup>.

1 As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 post, and as to its commencement see PARA 546 post.

2 Ibid s 2(1). As to the effect of the abolition of detinue see PARA 544 post.

3 See the text and notes 4-9 infra.

4 See the Torts (Interference with Goods) Act 1977 s 1 (as amended); and PARA 545 post.

5 See ibid s 3 (form of judgment where goods are detained: see PARA 653 post), s 4 (as amended) (interim relief where goods are detained: see PARA 654 post), s 5 (extinction of title on satisfaction of claim for damages: see PARA 655 post), s 6 (allowance for improvement of goods: see PARA 623 post), s 7 (double liability: see PARA 637 post), s 8 (competing rights to the goods: see PARA 644 post) and s 9 (as amended) (concurrent actions: see PARA 614 post).

- 6 See *ibid* ss 12, 13 (as amended), Sch 1; and PARA 647 post. See also BAILMENT.
- 7 See *ibid* s 10 (co-owners: see PARA 604 post), s 11(1) (contributory negligence: see PARA 639 post), s 11(2) (receipt of goods by way of pledge: see PARA 555 post), s 11(3) (denial of title: see PARA 553 post).
- 8 See *ibid* s 2(2); and PARA 548 post. As to the obligations of bailees to exercise diligence see BAILMENT.
- 9 Conversion did not lie at common law against a bailee for mere negligent loss: see *Heald v Carey* (1852) 11 CB 977. See also *Owen v Lewyn* (1672) 1 Vent 223; *Anon* (1704) 2 Salk 655; *Ross v Johnson* (1772) 5 Burr 2825; *Severin v Keppell* (1802) 4 Esp 156; *Attersol v Briant* (1808) 1 Camp 409; *The Arpad* [1934] P 189 at 232, CA, per Maugham LJ. See also *Motis Exports Ltd v Dampskeibsselskabet AF1912* [1999] 1 Lloyd's Rep 837 at 845, [1999] 1 All ER (Comm) 571 at 580 per Rix J.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### **543 Reconstitution by statute**

NOTE 9--*Motis Exports*, cited, affirmed: [2000] 1 All ER (Comm) 91, CA.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(A) Introduction/544. Effect of simplification of categories of wrong.

### **544. Effect of simplification of categories of wrong.**

The effect of the changes introduced by the Torts (Interference with Goods) Act 1977<sup>1</sup> is that conversion lies in every case in which detinue formerly lay before it was abolished<sup>2</sup>. Consequently, although there is now a reduction in the number of civil remedies available for wrongful interference with goods, the area of conduct which is capable of being tortious remains undiminished<sup>3</sup>.

1 As to these changes see PARA 543 ante.

2 See *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375, in which reference was made (at 584 and at 1380) to the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 8; *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184 at 187-188, [1983] 1 WLR 959 at 962-963 per Parker J. As to the abolition of detinue see PARA 543 ante. As to conversion by detention see PARA 556 post.

3 As to conduct which amounts to conversion see PARA 548 et seq post.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(A) Introduction/545. Scope of the Torts (Interference with Goods) Act 1977.

#### **545. Scope of the Torts (Interference with Goods) Act 1977.**

The Torts (Interference with Goods) Act 1977 applies in large part to proceedings for wrongful interference<sup>1</sup>. 'Wrongful interference' or 'wrongful interference with goods' means conversion of goods (also called trover)<sup>2</sup>, trespass to goods<sup>3</sup>, negligence so far as it results in damage to goods or to an interest in goods<sup>4</sup>, and any other tort so far as it results in damage to goods or to an interest in goods<sup>5</sup>. It follows that the Act is confined to proceedings in tort. 'Goods' includes all chattels personal other than things in action and money<sup>6</sup>.

The Act binds the Crown, but as regards the Crown's liability in tort does not bind the Crown further than the Crown is made liable in tort by the Crown Proceedings Act 1947<sup>7</sup>.

1 As to the scheme of the Torts (Interference with Goods) Act 1977, and its application to the torts of wrongful interference see PARA 543 ante.

2 Ibid s 1(a).

3 Ibid s 1(b).

4 Ibid s 1(c).

5 Ibid s 1(d), which is expressed to be subject to s 2 (abolition of detinue; expansion of conversion), as to which see PARA 543 ante. The action on the case for damage to a reversionary interest in goods falls within this provision: *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 686, [1998] 2 BCLC 659 at 672, CA, per Mummery LJ, and at 703, 690-691 per Hobhouse LJ. As to this action generally see PARA 685 post. For further examples of wrongs to chattels which fall within the Torts (Interference With Goods) Act 1977 s 1(d) see rescue, pound-breach and replevin (see DISTRESS vol 13 (2007 Reissue) PARA 1069 et seq). References in the Torts (Interference with Goods) Act 1977 (however worded) to proceedings for wrongful interference or to a claim or right to claim for wrongful interference include references to proceedings by virtue of the Consumer Protection Act 1987 Pt I (ss 1-9) or the Consumer Protection (Northern Ireland) Order 1987, SI 1987/2049 (NI 20), Pt II (product liability) in respect of any damage to goods or to an interest in goods or, as the case may be, to a claim or right to claim by virtue of that Part in respect of any such damage: Torts (Interference with Goods) Act 1977 s 1 (amended by the Consumer Protection Act 1987 Act s 48(1), Sch 4 para 5; the Consumer Protection (Northern Ireland) Order 1987, SI 1987/2049 (NI 20), art 35(1), Sch 3 para 3).

6 Torts (Interference with Goods) Act 1977 s 14(1). However, it seems that the statute will apply to specific currency delivered on an undertaking that it will be returned in specie: Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 29.

7 Torts (Interference with Goods) Act 1977 s 16(3). Before the Crown Proceedings Act 1947 the Crown was immune from proceedings in tort. Since the Act the Crown is subject to liability, in relation to Her Majesty's government, as if it were a private person of full age and capacity, subject to certain limitations and savings: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 182.

#### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

#### **545 Scope of the Torts (Interference with Goods) Act 1977**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 5--SI 1987/2049 amended: SI 2001/3649.

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#### **546. Commencement and limitation of actions.**

Provisions of the Torts (Interference with Goods) Act 1977 came into force at various times<sup>1</sup>. It applies to acts or omissions before it came into force as well as to later ones<sup>2</sup>. For the purposes of limitation of actions<sup>3</sup> the cause of action is to be treated as having accrued at the time of the act or omission even if proceedings could not have been brought before the commencement of the Act<sup>4</sup>. Further, for these purposes any claim by way of set-off or counterclaim is to be deemed to be a separate action, and to have been brought on the same date as the action in which the set-off or counterclaim is pleaded<sup>5</sup>. However, the Act does not affect any action or arbitration brought before its commencement or any proceedings brought to enforce a decision in the action or arbitration<sup>6</sup>. The statutory provisions relating to the disposal of uncollected goods do not apply where the goods were bailed before the commencement of the Act<sup>7</sup>.

1 The Torts (Interference with Goods) Act 1977 was to come into force on such day as the Lord Chancellor might by order contained in a statutory instrument appoint, and such an order might appoint different dates for different provisions or for different purposes: s 17 (2). Sections 12-16, 17(1), (2), Sch 1, came into force on 1 January 1978: Torts (Interference with Goods) Act 1977 (Commencement No 1) Order 1977, SI 1977/1910. The remainder of the Torts (Interference with Goods) Act 1977, with the exception of certain provisions in relation to Northern Ireland, was brought into force on 1 June 1978: Torts (Interference with Goods) Act 1977 (Commencement No 2) Order 1978, SI 1978/627. That part of the Act which was not already in force in Northern Ireland came into force there on 1 January 1981: Torts (Interference with Goods) Act 1977 (Commencement No 3) Order 1980, SI 1980/2024.

2 Torts (Interference with Goods) Act 1977 s 17(3), Sch 2 para 2. See also *Anderson and Anderson v Earlanger* [1980] CLY 133. Cf *Finlayson v Taylor* (1983) 133 NLJ 720.

3 Ie for the purposes of the Limitation Act 1980 or any other limitation enactment: Torts (Interference with Goods) Act 1977, Sch 2 para 2 (amended by virtue of the Interpretation Act 1978 s 17(2)(a)).

4 Torts (Interference with Goods) Act 1977 Sch 2 para 2.

5 Ibid Sch 2 para 3.

6 Ibid Sch 2 para 1. Since the enactment of the CPR, an action is now known as a claim: see CIVIL PROCEDURE vol 11 (2009) PARA 18.

7 Ibid s 12(9). Goods bailed before the commencement of the Torts (Interference with Goods) Act 1977 are governed by the Disposal of Uncollected Goods Act 1952 (see the Torts (Interference with Goods) Act 1977 s 15(2)) which is, however, repealed for all other purposes from 1 January 1978 (see s 15(1); Torts (Interference

with Goods) Act 1977 (Commencement No 1) Order 1977, SI 1977/1910). See also *Anderson and Anderson v Earlanger* [1980] CLY 133.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(A) Introduction/547. The subject matter.

#### 547. The subject matter.

The subject matter of conversion or trover must be specific personal property, whether goods or chattels<sup>1</sup>. Trover does not lie for money, unless it is specifically identified, as where specific coins are delivered on the undertaking that they are to be restored exactly to the bailor<sup>2</sup>.

Trover will not lie for fixtures which are attached to the freehold<sup>3</sup>; however, trover does lie for fixtures<sup>4</sup>, timber<sup>5</sup>, crops<sup>6</sup>, soil and minerals<sup>7</sup> after those things have been severed from the freehold.

The claim may also be brought for any wild animal in which there is a right of property, but animals *ferae naturae* which have escaped the possession of the claimant, and are beyond his power of pursuit, are not chattels and are not, therefore, the subject of a claim for conversion<sup>8</sup>.

In limited circumstances, conversion may lie for an unauthorised interference with human remains, or human bodily parts or products<sup>9</sup>. In general, however, there is no right of property or of possession in such material, and therefore no right of action in conversion<sup>10</sup>.

1 *Friedel v Castlereagh* (1877) 11 ICLR 93. The thing in respect of which the action is brought must be one which is capable of being possessed: see PERSONAL PROPERTY vol 35 (Reissue) PARA 1205. See also *Lee v Trimcliffe Motors* [1983] CLY 3633, County Court, where it was held that conversion did not lie in respect of a car registration number, which was incapable of having a separate existence from the car itself, and over which the plaintiff therefore retained no right when he sold the car. As to conversion or trover see PARAS 542, 545 ante.

2 *Orton v Butler* (1822) 5 B & Ald 652; *Foster v Green* (1862) 7 H & N 881. In *Foster v Green* (1862) as reported in 31 LJ Ex 158 at 161, it was held, per Pollock CB, in argument, that an action would not lie for money unless in a bag. The buyer of a specified quantity of goods cannot normally sue in trover unless they have been appropriated to him: *Austen v Craven* (1812) 4 Taunt 644; *Wait v Baker* (1848) 2 Exch 1; *Godts v Rose* (1855) 17 CB 229; but cf the Sale of Goods (Amendment) Act 1995; and see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 124-125. See also *Abington v Lipscomb* (1841) 1 QB 776 (insufficient ascertainment of beasts due as heriots to the lord of the manor). However, trover will lie for an undivided part of a chattel (*Watson v King* (1815) 4 Camp 272; cf PARA 559 post, (co-ownership), or for an undivided portion of a specific quantity of money (*Jackson v Anderson* (1811) 4 Taunt 24), or, subject to the statutory protection, in respect of the collection by a banker of cheques (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 881 et seq.).

3 *Greene v Cole* (1670) 2 Wms Saund (6th Edn) 251 at 259 note (c), HL; *Davis v Jones* (1818) 2 B & Ald 165; *Colegrave v Dias Santos* (1823) 2 B & C 76; *Longstaff v Meagoe* (1834) 2 Ad & El 167; *Mackintosh v Trotter* (1838) 3 M & W 184; *Roffey v Henderson* (1851) 17 QB 574; *Wilde v Waters* (1855) 16 CB 637, Ex Ch; *Gough v Wood & Co* [1894] 1 QB 713, CA; *Re Samuel Allen & Sons Ltd* [1907] 1 Ch 575; *Ellis v Glover and Hobson Ltd* [1908] 1 KB 388, CA.

4 *Davis v Jones* (1818) 2 B & Ald 165; *Farrant v Thompson* (1822) 5 B & Ald 826; *Sheen v Rickie* (1839) 5 M & W 175; *Dalton v Whittem* (1842) 3 QB 961; *London and Westminster Loan and Discount Co Ltd v Drake* (1859) 6 CBN 798 at 811. As to fixtures generally see *LANDLORD AND TENANT* vol 27(1) (2006 Reissue) PARA 172 et seq.

5 *Berry v Heard* (1632) Cro Car 242; *Pyne v Dor* (1785) 1 Term Rep 55; *Blackett v Lowes* (1814) 2 M & S 494.

6 *Davis v Connop* (1814) 1 Price 53 (trover for corn cut by outgoing tenant). However, the remedy does not lie where the tenant is entitled to take an away-going crop: see *Rackham v Jesup and Thomson* (1772) 3 Wils 332 (rushes); *Boraston v Green* (1812) 16 East 71 (see *AGRICULTURAL LAND* vol 1 (2008) PARAS 367-368); *Mills v Brooker* [1919] 1 KB 555 (fruit of overhanging branches lopped by adjoining owner).

7 *Wood v Morewood* (1841) 3 QB 440n; *Northam v Bowden* (1855) 11 Exch 70; *Hilton v Woods* (1867) LR 4 Eq 432; *Jegon v Vivian* (1871) 6 Ch App 742; *Eardley v Granville* (1876) 3 ChD 826; *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, HL. The same principle has been applied to declarations in trespass in *Attersoll v Stevens* (1808) 1 Taunt 183 at 199 and *Martin v Porter* (1839) 5 M & W 351. See also *MINES, MINERALS AND QUARRIES* vol 31 (2003 Reissue) PARAS 34, 37-38. Cf *Boileau v Health* (1898) 2 Ch 30 (property in mining refuse).

8 *Kearry v Pattinson* [1939] 1 KB 471, [1939] 1 All ER 65, CA (swarm of bees escaping onto another man's land): see *ANIMALS* vol 2 (2008) PARAS 711-712.

9 *Dobson v North Tyneside Health Authority* [1996] 4 All ER 474 at 479, (1996) 33 BMLR 146 at 151, CA, per Peter Gibson LJ; *R v Kelly* [1998] 3 All ER 741 at 746, 749-750, [1999] 2 WLR 384 at 389, 393, CA, per Rose LJ, both citing *Doodeward v Spence* (1908) 6 CLR 406 at 414, Aust HC, obiter per Griffith CJ (corpse or human body parts may become the subject of proprietary or possessory rights where a person has by the lawful exercise of work or skill so dealt with a human body or part thereof that it has acquired some attributes differentiating it from a mere corpse awaiting burial). A person charged by law with the burial of a corpse is entitled to enforce its delivery up for that purpose: *Dobson v North Tyneside Health Authority* supra at 478 and 150 per Peter Gibson LJ; *R v Kelly* supra at 749-750 and 392-393 per Rose LJ; *Doodeward v Spence* (1908) 6 CLR 406 at 411, Aust HC, obiter per Griffith CJ. See also *EXECUTORS AND ADMINISTRATORS; CREMATION AND BURIAL*.

10 *Dobson v North Tyneside Health Authority* [1996] 4 All ER 474, 33 BMLR 146, CA; *R v Kelly* [1999] QB 621, [1998] 3 All ER 741, CA. See also *Williams v Williams* (1882) 20 ChD 659 at 665 per Kay J.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(a) The Cause of Action/548. The essence of conversion.

## (B) CONVERSION

### (a) *The Cause of Action*

#### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

#### **547 The subject matter**

NOTE 1--There can be no conversion of a chose in action: *OBG Ltd v Allan; Mainstream Properties Ltd v Young* [2007] UKHL 21, [2007] 2 WLR 920 (invalidly appointed receivers taking control of a business).

NOTE 9--See *Re Organ Retention Group Litigation* [2004] EWHC 644 (QB), [2005] 2 WLR 358 (no action in tort for wrongful interference with the body where hospital removed organs of deceased child without permission of parent, but action might lie in conversion if parent specifically requested return of organ).

#### **548. The essence of conversion.**

Conversion exists in three forms. To constitute the first form of conversion there must be a positive wrongful act of dealing with the goods in a manner inconsistent with the owner's rights<sup>1</sup>, and an intention<sup>2</sup> in so doing to deny the owner's rights or to assert a right inconsistent with them<sup>3</sup>. This inconsistency is the gist of the action. There need not be any knowledge on the part of the person sued that the goods belong to someone else<sup>4</sup>; nor need there be any positive intention to challenge the true owner's rights<sup>5</sup>. Liability in conversion is strict<sup>6</sup> and fraud or other dishonesty is not a necessary ingredient in the action<sup>7</sup>. Goods may be the subject of successive and independent conversions by persons dealing with them in such a manner and with such an intention<sup>8</sup>.

A second form of conversion is committed where goods are wrongfully detained by the defendant<sup>9</sup>. A wrongful detention gave rise to an action for detinue before detinue was abolished<sup>10</sup> and now gives rise to an action in conversion<sup>11</sup>. The normal method of establishing a wrongful detention is to show that the claimant made a demand for the return of the goods and that the defendant refused after a reasonable time to comply with that demand<sup>12</sup>. In many cases this form of conversion will coincide with the first.

The third form of conversion lies for loss or destruction of goods which a bailee has allowed to happen in breach of his duty to his bailor<sup>13</sup>. This enables conversion to be brought in a case which would not have constituted conversion at common law, but which would have been detinue before detinue was abolished<sup>14</sup>.

1 *Bromley v Coxwell* (1801) 2 Bos & P 438; *Drake v Shorter* (1802) 4 Esp 165; *Ashby v Tolhurst* [1937] 2 KB 242, [1937] 2 All ER 837, CA. A breach of a contract unaccompanied by any tortious act is not conversion: *Dufresne v Hutchinson* (1810) 3 Taunt 117 (broker selling at less than authorised price). Cf *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 17, CA (knowingly misapplying cheques); *Maynegrain Pty Ltd v Compaflina Bank* (1984) 58 ALJR 389, PC.

2 A person may be presumed to intend the natural and probable consequences of his intentional act, and so the act of using another's goods in an illegal manner, which could result in their forfeiture, will constitute a conversion: see *Moorgate Mercantile Co Ltd v Finch and Read* [1962] 1 QB 701, [1962] 2 All ER 467, CA (using a car hired to third person for conveying uncustomed watches). Cf *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 181, CA, per Ackner LJ.

3 *Lancashire and Yorkshire Rly Co, London and North Western Rly Co and Greaser Ltd v MacNicoll* (1918) 88 LJKB 601 at 605 per Atkin J; *Oakley v Lyster* [1931] 1 KB 148 at 153, CA; *Caxton Publishing Co Ltd v Sutherland Publishing Co* [1939] AC 178 at 201-202, [1938] 4 All ER 389 at 403-404, HL. See also *Maynegrain Pty Ltd v Compaflina Bank* (1984) 58 ALJR 389, PC. See further *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375.

4 *Hollins v Fowler* (1875) LR 7 HL 757; *Motis Exports Ltd v Dampsksibsselskabet AF1912* [1999] 1 All ER (Comm) 571 at 582, [1999] 1 Lloyd's Rep 837 at 844 per Rix J, citing the text. A sheriff may be liable for conversion in selling goods which are not the property of the judgment debtor, notwithstanding the sheriff's ignorance of the fact that the goods belonged to a third person: *Neumann v Bakeaway Ltd* [1983] 2 All ER 935 at 939, [1983] 1 WLR 1016n at 1019-1020, CA, per Geoffrey Lane LJ, and at 943 and 1023 per Sir John Pennycuick. See also *Jelks v Hayward* [1905] 2 KB 460 at 465 per Lord Alverstone CJ. As to other defences available to a sheriff in an action for conversion see *Neumann v Bakeaway Ltd* *supra*; *Observer Ltd v Gordon* [1983] 2 All ER 945, [1983] 1 WLR 1008. As to sheriffs see SHERIFFS. In those exceptional cases where the claimant is entitled to sue for conversion in respect of an equitable interest enjoyed by him in the goods (eg as an equitable pledgee), the fact that the defendant neither knew nor had cause to know of the claimant's interest may afford him a defence: *Maynegrain Pty Ltd v Compaflina Bank* (1984) 58 ALJR 389, PC. As to whether the holder of an equitable interest can sue in conversion see PARA 561 post. See also *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA, explaining *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 17, CA.

5 *Lancashire and Yorkshire Rly Co v MacNicoll* (1918) 118 LT 596 at 598 per Atkin J; *Caxton Publishing Co Ltd v Sutherland Publishing Co Ltd* [1939] AC 178 at 202, [1938] 4 All ER 389 at 404, HL, per Lord Porter; *Motis Exports Ltd v Dampskeibsselskabet AF1912* [1999] 1 All ER (Comm) 571 at 582, [1999] 1 Lloyd's Rep 837 at 844 per Rix J, citing the text. See also *Marfani & Co Ltd v Midland Bank Ltd* [1968] 2 All ER 573 at 577, [1968] 1 WLR 956 at 970, CA, per Diplock LJ.

6 *Hollins v Fowler* (1875) LR 7 HL 757; *Lancashire and Yorkshire Rly Co v MacNicoll* (1918) 118 LT 596 at 598 per Atkin J, and at 597 per Lawrence J; *Marfani & Co Ltd v Midland Bank Ltd* [1968] 2 All ER 573 at 577, [1968] 1 WLR 956 at 970, CA, per Diplock LJ; *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 685-686, [1998] 2 BCLC 659 at 670-671, CA, per Mummery LJ, and at 699, 686 per Hobhouse LJ; *Motis Exports Ltd v Dampskeibsselskabet AF1912* [1999] 1 All ER (Comm) 571 at 580-583, [1999] 1 Lloyd's Rep 837 at 843-845 per Rix J. However, under the Torts (Interference with Goods) Act 1977 s 2(2) liability in conversion depends on a breach of duty by a bailee: see the text and notes 13-14 infra.

7 *Beaman v ARTS Ltd* [1949] 1 KB 550, [1949] 1 All ER 465, CA (decided under limitation legislation).

8 *Morris v Robinson* (1824) 3 B & C 196 at 206 per Holroyd J; *Brinsmead v Harrison* (1871) LR 6 CP 584; *Brinsmead v Harrison* (1872) LR 7 CP 547, Ex Ch. As to the measure of damages in the case of successive conversions see PARA 636 post.

9 *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375; *Finlayson v Taylor* (1983) 133 NLJ 720. Cf *Arthur v Anker* [1997] QB 564, [1996] 3 All ER 783, CA (immobilisation of vehicle by wheel clamp). See also PARA 542 ante.

10 As to the abolition of detinue see the Torts (Interference with Goods) Act 1977 s 2(1); and PARAS 542-543 ante.

11 See *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375; and PARA 543 ante.

12 *Miller v Dell* [1891] 1 QB 468, CA; *Clayton v Le Roy* [1911] 2 KB 1031, CA, particularly at 1052 per Farwell LJ. See also *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195 at 199-200, [1993] BCLC 1077 at 1081-1082 per Millett J (demand and refusal must be shown in absence of overt act of withholding goods from true owner; mere unpermitted keeping of another's chattel is not a conversion of it). Cf *London Jewellers Ltd v Attenborough* [1934] 2 KB 206 at 214, CA, per Scrutton LJ. See further PARA 556 et seq post.

13 See the Torts (Interference with Goods) Act 1977 s 2(2). See also BAILMENT. Cf *Mitchell v Ealing London Borough Council* [1979] QB 1, [1978] 2 All ER 779.

14 See the Torts (Interference with Goods) Act 1977 s 2(2).

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 548 The essence of conversion

NOTES 4-6--*Motis Exports*, cited, affirmed: [2000] 1 All ER (Comm) 91, CA.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(a) The Cause of Action/549. Sale and other disposition.

## 549. Sale and other disposition.

A wrongful sale of the goods of another person, if accompanied by delivery<sup>1</sup> of the goods or documents of title, amounts to conversion, and both the seller and the buyer are liable to be sued<sup>2</sup>, except where the buyer obtains a good title despite the wrongful sale<sup>3</sup> in which event the seller alone is liable<sup>4</sup>. A sale made otherwise than in accordance with a representation, whether true or not, by which the seller induced the owner of the chattel to part with its possession amounts to conversion<sup>5</sup>.

A mere agreement to sell goods, if unaccompanied by delivery, is not normally conversion<sup>6</sup>, although it may be otherwise where the sale is sufficient to confer a good title upon the purchaser without delivery, for then the owner's right of possession is impaired<sup>7</sup>.

Any other wrongful disposition of goods which has the effect of depriving the owner of the use of them permanently or for a substantial or indefinite time is conversion; thus, if a person pledges the goods of another<sup>8</sup>, or hands them over to someone other than the true owner<sup>9</sup>, or signs an order for the delivery of goods which are delivered under the order<sup>10</sup>, he is guilty of conversion.

Wrongfully to destroy goods of another, or change their quality, is conversion<sup>11</sup>.

The mere misuse of goods, for example by a bailee in contravention of the terms of the bailment, is not necessarily conversion, but may be so where the act of misuse is calculated to impair the claimant's right of possession or to deprive him of it<sup>12</sup>. An act of misuse may forfeit the bailee's own right of possession while falling short of a conversion, and thereby enable the bailor to sue for conversion for any subsequent interference with his title<sup>13</sup>.

1 Cf *Saleh Farid v Theodorou and Blacklake Securities* (30 January 1992, unreported), CA; and see note 7 infra. As to what constitutes delivery see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 163 et seq.

2 *M'Combie v Davies* (1805) 6 East 538 (pledgee); *Glasspoole v Young* (1829) 9 B & C 696 (sheriff); *Binns v Pigot* (1840) 9 C & P 208 (innkeeper); *Metcalfe v Lumsden* (1844) 1 Car & Kir 309 (purchaser in good faith); *Cooper v Willomatt* (1845) 1 CB 672 (sale by bailee for hire); *Hollins v Fowler* (1875) LR 7 HL 757 (cotton broker); *Mulliner v Florence* (1878) 3 QBD 484, CA (innkeeper); *Consolidated Co v Curtis & Son* [1892] 1 QB 495 (auctioneer: see PARA 552 post; and AUCTION vol 2(3) (Reissue) PARA 226); *Hannah v Peel* [1945] KB 509, [1945] 2 All ER 288 (sale by freeholder); *Moorgate Mercantile Co Ltd v Twitchings* [1977] AC 890, [1976] 2 All ER 641, HL (car dealer); *J Sargent (Garages) Ltd v Motor Auctions (West Bromwich) Ltd* [1977] RTR 121, CA; *Union Transport Finance Ltd v British Car Auctions Ltd* [1978] 2 All ER 385, CA; *RH Willis & Son (a firm) v British Car Auctions Ltd* [1978] 2 All ER 392, [1978] 1 WLR 438, CA (auctioneers). As to the conversion of goods let under hire purchase agreements see CONSUMER CREDIT.

3 As to cases in which the buyer obtains good title despite wrongful sale see PARAS 551, 555 post. Where the buyer derives a good title from the unauthorised sale to him, the original owner ceases to enjoy any immediate right of possession over the goods against the buyer and is thus deprived of standing to sue in conversion: see *Winkworth v Christie, Manson & Woods Ltd* [1980] Ch 496, [1980] 1 All ER 1121 (overseas sale conferring title under lex situs); and PARA 575 post. As to the necessity of an immediate right of possession in conversion claims see PARA 559 post.

4 See PARAS 555, 559 post.

5 *Webster v General Accident Fire and Life Assurance Corp Ltd* [1953] 1 QB 520, [1953] 1 All ER 663.

6 *Lancashire Waggon Co v Fitzhugh* (1861) 6 H & N 502; *Edelstein v Schuler & Co* [1902] 2 KB 144 at 156. A fraudulent offer for sale by a bailee may, however, amount in criminal law to an appropriation constituting theft: see the Theft Act 1968 ss 1(1), 3(1); *Rogers v Arnott* [1960] 2 QB 244, [1960] 2 All ER 417, DC.

7 For an example of a sale where delivery would not appear strictly necessary see the Sale of Goods Act 1979 s 23 (sale under voidable title); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 154. Cf also *Douglas Valley Finance Co Ltd v S Hughes (Hirers) Ltd* [1969] 1 QB 738, [1966] 3 All ER 214 (defendant converters in constructive and symbolic possession of lorries). In *Saleh Farid v Theodorou and Blacklake Securities* (30 January 1992, unreported), CA, an unauthorised sale and lease-back of a motor vehicle, without

any change in physical possession or transfer of title to the buyer-lessor, was accepted by the parties as constituting a conversion and the court did not dissent from that.

8 *Parker v Godin* (1728) 2 Stra 813; *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA. As to the rights of the true owner of goods wrongfully pawned see PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARAS 35-38. As to actions for recovery by the pawnor against the pawnee see PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 21.

9 *Powell v Hoyland* (1851) 6 Exch 67; *Singer Manufacturing Co v Clark* (1879) 5 ExD 37; *Winter v Bancks* (1901) 17 TLR 446.

10 *Hiort v Bott* (1874) LR 9 Exch 86; *Van Oppen & Co Ltd v Tredegar Ltd* (1921) 37 TLR 504 (cf *Elvin and Powell Ltd v Plummer Roddis Ltd* (1933) 50 TLR 158 (no conversion where involuntary bailees disposed of goods themselves; and see further on this question *Motis Exports Ltd v Dampskebselskabet AF1912* [1999] 1 All ER (Comm) 571 at 582-583, [1999] 1 Lloyd's Rep 837 at 845 per Rix J)); *Ernest Scragg & Sons Ltd v Perseverance Banking and Trust Co Ltd* [1973] 2 Lloyd's Rep 101, CA; see also PARA 552 post. Where a bailee for carriage engages a sub-carrier without authority from the bailor and without taking care to check the sub-carrier's credentials, and delivers valuable goods to the sub-carrier which are later stolen by him, the first bailee commits a conversion: *Garnham, Harris and Elton Ltd v Alfred W Ellis (Transport) Ltd* [1967] 2 All ER 940, [1967] 1 WLR 940. The facts of this case would now also constitute conversion under the Torts (Interference with Goods) Act 1977 s 2(2) (see PARA 548 ante).

11 See PARA 542 text and note 16 ante. See also *ibid* s 2(2); and PARA 548 ante.

12 *Moorgate Mercantile Co Ltd v Finch and Read* [1962] 1 QB 701, [1962] 2 All ER 467, CA, where a car borrowed from its hirer and used to smuggle watches was subsequently forfeited, and the borrower was liable for conversion. See also *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204 at 229, Aust HC, per Dixon J; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 181, CA, per Ackner LJ.

13 *Union Transport Finance Ltd v British Car Auctions Ltd* [1978] 2 All ER 385, CA.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 549 Sale and other disposition

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 10--*Motis Exports*, cited, affirmed: [2000] 1 All ER (Comm) 91, CA.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(a) The Cause of Action/550. Wrongful taking.

### 550. Wrongful taking.

If the goods of another person are wrongfully taken and converted to the use of the taker or of a third person, the taker is guilty of conversion, as where a person's goods are taken wrongfully in execution<sup>1</sup> or otherwise<sup>2</sup>, or wrongfully distrained<sup>3</sup>.

1 *Garland v Carlisle* (1837) 4 Cl & Fin 693, HL. See also PARA 661 post; and CIVIL PROCEDURE. See also *Neumann v Bakeaway Ltd* [1983] 2 All ER 935, [1983] 1 WLR 1016n, CA; *Observer Ltd v Gordon* [1983] 2 All ER 945, [1983] 1 WLR 1008; and PARA 548 note 4 ante.

2 *BBMB Finance Hong Kong Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA (wrongful taking and sale). A customs officer who seizes goods wrongfully for non-payment of duty and carries them to a warehouse is guilty of conversion (*Tinkler v Poole* (1770) 5 Burr 2657). See also *Playa Larga (Owners of cargo lately laden on board) v I Congreso del Partido (Owners), Marble Islands (Owners of cargo lately laden on board) v I Congreso del Partido (Owners), I Congreso del Partido* [1983] 1 AC 244 at 259, [1981] 2 All ER 1064 at 1068, HL, per Lord Wilberforce, at 275-276 and 1080 per Lord Diplock, at 277 and 1082 per Lord Edmund Davies, and at 279 and 1083 per Lord Bridge of Harwich; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 180-181, CA, per Ackner LJ.

3 *Shipwick v Blanchard* (1795) 6 Term Rep 298; *Clowes v Hughes* (1870) LR 5 Exch 160. See also DISTRESS vol 13 (2007 Reissue) PARA 1090 et seq. If goods are lawfully distrained and a sufficient tender is made of the rent before impounding, the refusal to deliver up the goods is evidence of conversion: *Loring v Warburton* (1858) EB & E 507. See also DISTRESS vol 13 (2007 Reissue) PARA 975. It is not evidence of conversion if the tender is made after impounding (*Singleton v Williamson* (1862) 7 H & N 747), or if some rent is due and a distress is made for more than is due *Whitworth v Smith* (1832) 5 C & P 250), but the tenant may sue for damages for irregular distress (see DISTRESS vol 13 (2007 Reissue) PARA 1077 et seq). If there are other goods on the premises, and goods, such as sheep, are distrained which can only be lawfully seized if there are no other goods to seize, trover lies: *Keen v Priest* (1859) 4 H & N 236. As to unlawful distress and the remedies for it see generally DISTRESS vol 13 (2007 Reissue) PARA 1076 et seq.

## UPDATE

### 542-686 Wrongful Interference with Goods

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### 551. Position of transferee.

A wrongful taker of goods commits conversion<sup>1</sup>, and the reception of such goods from the taker by way of sale, pledge or other disposition will normally be conversion on the part of the recipient, however innocently it is committed<sup>2</sup>. But in certain circumstances, a person receiving goods from a wrongful taker may obtain a good title as against the person from whom they were taken<sup>3</sup>. For example, where a wrongdoer obtains possession of goods by fraud under a voidable contract of sale and sells them to another person who takes them in good faith before the owner has repudiated the fraudulent transaction, the purchaser has a good title to the goods and cannot be sued in conversion<sup>4</sup>. Similarly, a person may acquire a good title to goods under the Factors Act 1889 through a disposition by a mercantile agent; although such an agent may have no authority to dispose of the goods, the transferee is not guilty of conversion<sup>5</sup>.

1 See PARA 550 ante.

2 See PARA 555 post. As to the recipient of goods under a pledge see the Torts (Interference with Goods) Act 1977 s 11(2); and PARA 555 note 5 post.

3 See PARA 555 heads (1)-(4) post.

4 *Sheppard v Shoolbred* (1841) Car & M 61; *Whitehorn Bros v Davison* [1911] 1 KB 463, CA; *Phillips v Brooks Ltd* [1919] 2 KB 243; *Lewis v Averay* [1972] 1 QB 198, [1971] 3 All ER 907, CA; *Thomas v Heelas* (1986) Lexis, Enggen Library, Cases File, CA. Cf *Ingram v Little* [1961] 1 QB 31, [1960] 3 All ER 332, CA. See also the Sale of Goods Act 1979 s 23; PARA 555 head (1) post; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 154.

5 See the Factors Act 1889 s 2; PARA 555 head (2) post; and AGENCY vol 1 (2008) PARA 148.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 551 Position of transferee

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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### 552. Removal and misdelivery.

Although a mere wrongful removal of goods may be a trespass, it does not amount to conversion unless there is an intent to convert them to the use of the taker or some third person, or otherwise to deal with them in a manner inconsistent with the rights of the owner<sup>1</sup>. A carrier<sup>2</sup>, wharfinger<sup>3</sup> or packer<sup>4</sup> who merely purports to change the position of goods by shipping, warehousing or removing them is not liable in conversion, for his acts have not affected the property in the goods<sup>5</sup>. However, where such a person delivers goods with a view to changing the property in them, and the delivery does not take place with the authority of the true owner<sup>6</sup>, he may be liable in conversion<sup>7</sup>. This is so even though he is innocent of the lack of the authority of the owner<sup>8</sup>. An auctioneer who receives goods into his custody and sells and delivers them to the purchaser with a view to passing the property is liable as having converted the goods<sup>9</sup>. Misdelivery by a bailee to someone other than the person entitled to possession of the goods is generally conversion<sup>10</sup>. It makes no difference that, in making the misdelivery, the bailee intended to effect the return of goods to their owner<sup>11</sup>. Similarly, the delivery of goods (or the provision of a delivery order) to persons who present a forged bill of lading to a carrier or other bailee is a conversion, though the bailee believes that the presenters own the instrument and are entitled to present it<sup>12</sup>.

The harshness of this rule has been mitigated by those cases which have decided that where the innocent transferor merely acts ministerially<sup>13</sup> and not as a principal<sup>14</sup> he is excused. Thus a solicitor who on the instructions of his bankrupt client delivers the client's goods to an agent of

the client, knowing of the agent's intention to sell the goods, is not liable in conversion<sup>15</sup>. It has been held that an auctioneer who merely delivers goods which have been sold privately by his client acts ministerially and is not liable<sup>16</sup>. However, the auctioneer will be liable where he is instrumental in effecting the contract of sale<sup>17</sup>.

1 *Fouldes v Willoughby* (1841) 8 M & W 540; *Lancashire and Yorkshire Rly Co, London and North Western Rly Co and Greaser Ltd v MacNicoll* (1918) 88 LJKB 601. Cf *Hesperides Hotels Ltd v Sermet* (1982) Times, 15 March, CA, per Lord Denning MR, who left open the question whether conversion could be committed by moving a chair across a room. As to the relation between trespass and trover (now conversion) see PARA 661 post.

2 *Sheridan v New Quay Co* (1858) 4 CBNS 618 at 650; *Hollins v Fowler* (1875) LR 7 HL 757 at 767, 801. See also CARRIAGE AND CARRIERS vol 7 (2008) PARAS 12, 14.

3 *Alexander v Southey* (1821) 5 B & Ald 247; *Heald v Carey* (1852) 11 CB 977, where goods from abroad to be held for the consignee were warehoused, moved by a wharfinger and were later destroyed by fire; *Hollins v Fowler* (1875) LR 7 HL 757 at 767.

4 *Greenway v Fisher* (1824) 1 C & P 190, as explained in *Hollins v Fowler* (1875) LR 7 HL 757 at 768.

5 For the distinction and conflict between certain views expressed in *Hollins v Fowler* (1875) LR 7 HL 757 see eg *AL Underwood Ltd v Bank of Liverpool and Martins* [1924] 1 KB 775 at 790, 791, CA, per Scrutton LJ.

6 Cf *Maynegrain Pty Ltd v Compafina Bank* (1984) 58 ALJR 389, PC, where the release of barley from storage by defendant warehousemen, with knowledge and acquiescence of an intermediary bank, was held not to constitute conversion by defendants against pledgees of the barley, who were undisclosed principals of intermediary bank: quaere, however, whether the doctrine of the undisclosed principal should operate where the acts of the putative agent are committed without the actual authority of the putative principal: see AGENCY vol 1 (2008) PARA 125.

7 *Syeds v Hay* (1791) 4 Term Rep 260; *Youl v Harbottle* (1791) Peake 68 at 69; *Devereux v Barclay* (1819) 2 B & Ald 702; *Stephenson v Hart* (1828) 4 Bing 476; *Wyld v Pickford* (1841) 8 M & W 443; *Heugh v London and North Western Rly Co* (1870) LR 5 Exch 51; *McKean v McIvor* (1870) LR 6 Exch 36; *Pontifex v Midland Rly Co* (1877) 3 QBD 23, DC; *Hiort v London and North Western Rly Co* (1879) 4 ExD 188, CA; *Glyn Mills & Co v East and West India Dock Co* (1882) 7 App Cas 591, HL. Failure by a carrier to deliver to the person who gives notice of stoppage in transit may amount to conversion: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 272. It is conversion for a carrier who is not entitled to freight to insist on the payment of freight as a condition for the delivery of goods: *Dewell v Moxon* (1808) 1 Taunt 391. As to conversion by a carrier see further CARRIAGE AND CARRIERS vol 7 (2008) PARA 14. As to an innkeeper's liability for goods deposited to await a carrier see LICENSING AND GAMBLING vol 67 (2008) PARA 200.

8 *Stephens v Elwall* (1815) 4 M & S 259 at 261, per Lord Ellenborough CJ; *Hollins v Fowler* (1875) LR 7 HL 757 at 764; *AL Underwood Ltd v Bank of Liverpool and Martins* [1924] 1 KB 775 at 791, CA; *Motis Exports Ltd v Dampskebsselskabet AF1912* [1999] 1 All ER (Comm) 571 at 582-583, [1999] 1 Lloyd's Rep 837 at 845 per Rix J. See also *Garland v Carlisle* (1837) 4 Cl & Fin 693, HL; *Maynegrain Pty Ltd v Compafina Bank* (1984) 58 ALJR 389, PC. As to the general principle that liability in conversion is strict see PARA 548 ante.

9 *Barker v Furlong* [1891] 2 Ch 172; *Consolidated Co v Curtis & Son* [1892] 1 QB 495; *Sachs v Miklos* [1948] 2 KB 23 at 37, 38, [1948] 1 All ER 67 at 69, CA; *Union Transport Finance Ltd v British Car Auctions Ltd* [1978] 2 All ER 385, CA; *RH Willis & Son v British Car Auctions Ltd* [1978] 2 All ER 392, [1978] 1 WLR 438, CA. An auctioneer's liability in conversion is not affected by the fact that the sale is not under the hammer but a sale following a provisional bid by the purchaser and concluded by private treaty through the arrangement of the auctioneer after bidding has ceased: *RH Willis & Son v British Car Auctions Ltd* supra, doubting *National Mercantile Bank Ltd v Rymill* (1881) 44 LT 767, CA, and *Turner v Hockey* (1887) 56 LJQB 301, DC. See also AUCTION vol 2(3) (Reissue) PARA 226. As to an auctioneer's duty to a vendor of goods and an auctioneer's lien see AUCTION vol 2(3) (Reissue) PARAS 215-222, 224.

10 *Hollins v Fowler* (1875) LR 7 App Cas 757 (and for exceptions see at 766-767 per Blackburn J); *Motis Exports Ltd v Dampskebsselskabet AF1912* [1999] 1 All ER (Comm) 571 at 582, [1999] 1 Lloyd's Rep 837 at 845 per Rix J.

11 *Hiort v Bott* (1874) LR 9 ExCh 86; *Hollins v Fowler* (1875) LR 7 App Cas 757. The position is different in the case of an involuntary bailee, who appears to be liable for misdelivery only if negligent: see PARAS 549 note 10 ante, 606 post.

12 *Motis Exports Ltd v Dampskebsselskabet AF1912* [1999] 1 All ER (Comm) 571 at 582, [1999] 1 Lloyd's Rep 837 at 845 per Rix J.

13 *Greenway v Fisher* (1824) 1 C & P 190; *Re Samuel (No 2)* [1945] Ch 408, [1945] 2 All ER 437n, CA. Cf the position of an employee who refuses to deliver goods without an order from his employer: see PARA 558 post.

14 *Stephens v Elwall* (1815) 4 M & S 259 at 261; *Hollins v Fowler* (1875) LR 7 HL 757; *Ernest Scragg & Sons Ltd v Perseverance Banking and Trust Co Ltd* [1973] 2 Lloyd's Rep 101, CA.

15 *Re Samuel (No 2)* [1945] Ch 408, [1945] 2 All ER 437n, CA.

16 *National Mercantile Bank v Rymill* (1881) 44 LT 767, CA.

17 *RH Willis & Son v British Car Auctions Ltd* [1978] 2 All ER 392, [1978] 1 WLR 438, CA, where *National Mercantile Bank Ltd v Rymill* (1881) 44 LT 767, CA, was doubted.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 552 Removal and misdelivery

NOTES 8, 10, 12--*Motis Exports*, cited, affirmed: [2000] 1 All ER (Comm) 91, CA.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(a) The Cause of Action/553. Dealing with the goods.

### 553. Dealing with the goods.

Denial of title is not of itself conversion<sup>1</sup>. However, there may be conversion of goods even though the defendant has not physically dealt with them<sup>2</sup>, or been in physical possession of them<sup>3</sup>, if his acts deprive the claimant of his right to possession or amount to a substantial interference with that right<sup>4</sup>. But a mere threat to prevent an owner in possession from removing his goods will not of itself amount to conversion<sup>5</sup>.

Where goods are left on land, and the occupier refuses to allow the owner of the goods to enter the land and retrieve them, the refusal is not necessarily conversion<sup>6</sup>. It may become conversion, however, if the occupier sets up in himself any right in respect of the goods<sup>7</sup>, or denies the claimant most of the rights of ownership, including the right to possession, for a period which is plainly indefinite<sup>8</sup>.

1 Torts (Interference with Goods) Act 1977 s 11(3). Cf *Oakley v Lyster* [1931] 1 KB 148 at 150, CA, per Scrutton LJ.

2 *Van Oppen & Co Ltd v Tredgars Ltd* (1921) 37 TLR 504. See also *Saleh Farid v Theodorou and Blacklake Securities* (30 January 1992, unreported), CA; and PARA 549 note 7 ante.

3 *Oakley v Lyster* [1931] 1 KB 148, CA, where there was conversion of hardcore by taking possession of part of it and totally denying and repudiating the owner's right to the remainder; *Douglas Valley Finance Co Ltd v S Hughes (Hirers) Ltd* [1969] 1 QB 738, [1966] 3 All ER 214, where hired lorries remaining in the possession of the hirer were purportedly sold to the defendants whose subsequent resale of the lorries resulted in the transfer of special licences for the lorries to other vehicles causing a diminution in the value of the lorries, and it was held

that there was conversion of the lorries and the licences; *HE Dibble Ltd v Moore (West, third party)* [1970] 2 QB 181 at 187, [1969] 3 All ER 1465 at 1469, CA, per Megaw LJ, where there was conversion of free-standing greenhouses sited on land purchased by the converter by refusing to allow delivery of the greenhouses to purchasers of them; *Bryanston Leasings Ltd v Principality Finance Ltd* [1977] RTR 45, where the receiver of the defendant lessees of vehicles repudiated the leases but refused to return the registration books, relating to the vehicles to the plaintiff lessors, and it was held that the defendants were thereby guilty of detinue of the documents and conversion of the vehicles, because the detention interfered with the plaintiff's rights of property in the vehicles, even though the plaintiffs had regained possession of them. See also *Kitano v Commonwealth of Australia* (1973) 129 CLR 151; affd on other grounds [1976] AC 99, PC; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA, where the seller's instructions to a sea carrier to remove from a harbour a vessel containing goods the property in which had passed to the buyer, and their consequent removal, were held to be conversion by the seller. Cf *Arthur v Anker* [1997] QB 564, [1996] 3 All ER 783, CA (immobilisation of vehicle by wheel clamp).

4 *Lancashire and Yorkshire Rly Co, London and North Western Rly Co and Greaser Ltd v MacNicoll* (1918) 88 LJKB 601; *Oakley v Lyster* [1931] 1 KB 148, CA. A bargain of sale without delivery is not normally sufficient to constitute conversion (*Consolidated Co v Curits & Son* [1892] 1 QB 495; cf *Douglas Valley Finance Co Ltd v S Hughes (Hirers) Ltd* [1969] 1 QB 738 at 751, [1966] 3 All ER 214 at 218); it seems that there must normally, in addition be some form of physical transfer (see the Torts (Interference with Goods) Act 1977 s 11(3); and the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 45). However, liability in conversion should follow where the sale confers a good title upon the buyer without delivery (see PARA 549 text and notes 6-7 ante) and even perhaps without any transmission of property or possession in extreme cases (see *Saleh Farid v Theodorou and Blacklake Securities* (30 January 1992, unreported), CA; and PARA 549 note 7 ante).

5 *England v Cowley* (1873) LR 8 Exch 126, where a landlord wishing to distrain stated that he would not permit the holder of a bill of sale to remove goods unless rent was paid. See also *Thorogood v Robinson* (1845) 6 QB 769, where the defendant entering land under a writ of possession would not let the plaintiff's employees remain on the land to remove the plaintiff's goods; there having been no subsequent demand or refusal, it was held that the jury might find no conversion. A mere statement that the expenses of a bankruptcy would fall on the claimant if he did not deliver up certain goods is not duress, and does not make the obtaining of the goods a conversion: *Powell v Hoyland* (1851) 6 Exch 67. Cf *Grainger v Hill* (1838) 4 Bing NC 212, where the threat was held to amount to a taking against the plaintiff's will.

6 *Wilde v Waters* (1855) 24 LJCP 193 at 195 per Maule J; *British Economical Lamp Co Ltd v Empire Mile End Ltd* (1913) 29 TLR 386.

7 *Walker v Clyde* (1861) 10 CBNS 381; *HE Dibble Ltd v Morre (West, third party)* [1970] 2 QB 181, [1969] 3 All ER 1465, CA; *Finlayson v Taylor* (1983) 133 NLJ 720 (wrongful assertion of lien).

8 *Bryanston Leasings Ltd v Principality Finance Ltd* [1977] RTR 45; *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579 at 583, [1980] 1 WLR 1375 at 1380, per Sir Robert Megarry V-C; *Finlayson v Taylor* (1983) 133 NLJ 720 (where goods disappeared following unlawful detention). See also *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(a) The Cause of Action/554. Negotiable and other instruments.

### 554. Negotiable and other instruments.

If a person who is not a holder in due course<sup>1</sup> of a negotiable instrument wrongfully pays it into a bank or otherwise transfers it, he is guilty of conversion<sup>2</sup>, but a person taking a negotiable instrument as a holder in due course acquires title to it and does not by that act commit a conversion of it, even if the transferor's title was defective<sup>3</sup>.

However, if an instrument or security is not negotiable, any person who receives it from a wrongdoer and deals with it in such a way as to deprive the true owner of the possession of the instrument is guilty of conversion, unless protected by some special statutory provision<sup>4</sup>.

1 For the meaning of 'holder in due course' see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1407. The drawer of a negotiable instrument (but not the original payee) can become a holder in due course: *Jade International Steel Stahl und Eisen GmbH & Co KG v Robert Nicholas (Steels) Ltd* [1978] QB 917, [1978] 3 All ER 104, CA.

2 *Goggerley v Cuthbert* (1806) 2 Bos & PNR 170; *Atkins v Owen* (1836) 4 Ad & El 819; *Palmer v Jarman* (1837) 2 M & W 282; *Alsager v Close* (1842) 10 M & W 576; *Carlton v Ireland* (1856) 5 E & B 765; *Paine v Bevan and Bevan* (1914) 110 LT 933; *Fenton Textile Association Ltd v Thomas* (1929) 45 TLR 264, CA.

3 *Wookey v Pole* (1820) 4 B & Ald 1; *Gorgier v Mieville* (1824) 3 B & C 45; *Middleton v Barned* (1849) 4 Exch 241; *Goodwin v Robarts* (1876) 1 App Cas 476, HL. As to the title of a holder in due course see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1488. As to the protection of a bank collecting cheques, crossed or uncrossed, where the customer has no title or a defective title see the Cheques Act 1957 s 4 (as amended); PARA 555 post; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 882-884. As to the liability of a bank collecting bills see PARA 555 post; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 887, 889.

4 See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 891, 900; and cf FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1499. As to the protection of a bank paying cheques see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 832 et seq; and see note 3 supra. If the holder of a bill of exchange loses it and the bank where it is payable, after receiving notice that it has been lost, discounts the bill, debits the customer on whom the bill was drawn with the amount, writes a discharge on it and delivers it up to the customer, the bank is guilty of conversion: *Lovell v Martin* (1813) 4 Taunt 799. If an uncrossed cheque or promissory note payable to order on which there is a forged indorsement is paid at the bank where it is payable and is returned to the drawer or maker, the true owner may, it seems, sue the drawer or maker in trover for the conversion: *Johnson v Windle* (1836) 3 Bing NC 225. As to trover see PARA 542 ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(a) The Cause of Action/555. Wrongful reception.

### 555. Wrongful reception.

Just as it is conversion wrongfully to dispose of goods, so it is conversion wrongfully<sup>1</sup> to receive them<sup>2</sup>, if that reception amounts to an assumption of wrongful dominion<sup>3</sup> and an assertion of a right inconsistent with that of the true owner<sup>4</sup>. The receipt of goods by way of pledge is conversion if the delivery of the goods is conversion<sup>5</sup>. Where there is no assertion of a right contrary to that of the owner, as in the case of an innocent finder of lost property<sup>6</sup>, conversion does not arise until there has been a demand and refusal to return the goods<sup>7</sup> or the possessor

has committed some other act repugnant to the owner's right<sup>8</sup>. A person receiving goods may be guilty of conversion even though he is innocent of the wrongful nature of the transaction and gives value for the goods<sup>9</sup>. However, this rule is subject to the following exceptions:

- 1 (1) where the property in goods passes from the true owner under a contract which is voidable<sup>10</sup> by him, for example for fraud, an innocent transferee for value obtains a good title unless, before the property has passed to him, the contract is avoided by the true owner<sup>11</sup>;
- 2 (2) a purchaser for value in good faith may obtain a good title from a mercantile agent acting in the ordinary course of business, by virtue of the Factors Act 1889, even though the agent disposes of the goods without his principal's authority<sup>12</sup>; and a seller continuing in possession of goods after sale, or a buyer obtaining possession of goods with the consent of the seller, may pass a good title to a third person even though he disposes of the goods without the owner's consent<sup>13</sup>;
- 3 (3) an owner of goods may be estopped by conduct<sup>14</sup> or negligent omission<sup>15</sup> from denying another's right to pass title in the goods, and any disposition by that other person then becomes binding on the owner, who may not sue the transferee in conversion<sup>16</sup>;
- 4 (4) a bank which, in good faith and without negligence, collects payment of cheques or other negotiable instruments in such circumstances as would give rise to a conversion of the cheque is protected by statute<sup>17</sup>.

1 As to the necessity for a positive wrongful act see PARA 548 ante.

2 Eg by buying the goods: see *Wilkinson v King* (1809) 2 Camp 335; *Farrant v Thompson* (1822) 5 B & Ald 826 (purchaser from sheriff); *Dyer v Pearson* (1824) 3 B & C 38; *Hilbery v Hatton* (1864) 2 H & C 822 (ratification by principal of innocent purchaser).

3 *M'Combie v Davies* (1805) 6 East 538 at 540 per Lord Ellenborough CJ. See also the cases cited in note 2 supra.

4 See the cases cited in note 2 supra. See also *Reckitt v Barnett, Pembroke and Slater Ltd* [1929] AC 176, HL; *Lloyds Bank Ltd v Chartered Bank of India, Australia and China* [1929] 1 KB 40, CA. See also FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 889. As to the statutory protection afforded to banks collecting crossed and uncrossed cheques see the Cheques Act 1957 s 4 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 882-884.

5 Torts (Interference with Goods) Act 1977 s 11(2). For the position prior to the Act, when innocent receipt by pledge appeared not to be conversion see *Spackman v Foster* (1883) 11 QBD 99, DC (pledge of title deeds); *Miller v Dell* [1891] 1 QB 468, CA (assignee of pledge); *Beaman v ARTS Ltd* [1948] 2 All ER 89 at 93, per Denning J (revised on appeal [1949] 1 KB 550, [1949] 1 All ER 465, CA, but without reference to this point). See further PARA 549 ante.

6 See *Spackman v Foster* (1883) 11 QBD 99 at 101, DC, per Grove J; *Miller v Dell* [1891] 1 QB 468 at 473, CA, obiter per Kay LJ. But the finder (or, where the occupier of land manifests sufficient intention to exercise control over the land to acquire rights superior to those of the finder in relation to goods found on the land, the occupier) owes an obligation to take such measures as are reasonable in all the circumstances to acquaint the true owner of the finding and of the present whereabouts of the goods, and to care for them meanwhile: *Parker v British Airways Board* [1982] QB 1004 at 1017-1018, [1982] 1 All ER 834 at 842-843, CA, per Donaldson LJ.

7 *Spackman v Foster* (1883) 11 QBD 99; *Miller v Dell* [1891] 1 QB 468 at 473, CA, obiter per Kay LJ. The grounds stated by Lord Ellenborough CJ for his decision on the facts in *M'Combie v Davies* (1805) 6 East 538 at 540 (a case of an innocent pledgee), are difficult to reconcile with *Spackman v Foster* supra (innocent pledgee). However, in *M'Combie v Davies* supra, Lawrence J and Le Blanc J, at 540, observed that the defendant had refused to return the goods after demand by the true owner. This was made the ground of distinction by Grove J in *Spackman v Foster* supra, at 101. The dicta of Lord Ellenborough CJ in *M'Combie v Davies* supra, were cited with approval in the banking cases referred to or cited in note 4 supra, but these cases were concerned with the collection of cheques, where the true owner's right is necessarily affected. See also *Parker v British Airways Board* [1982] QB 1004 at 1017-1018, [1982] 1 All ER 834 at 842-843, CA, per Donaldson LJ (finder's and occupier's duty to inform true owner of finding), and note 6 supra.

8 Eg an overt wrongful withholding: see *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1993] BCLC 1077.

9 See the cases cited in note 2 supra (innocent purchasers for value); and PARA 548 ante (strict liability).

10 It is otherwise if the contract is void, eg for fundamental mistake, when no property passes and any transfer is therefore challengeable in conversion: *Cundy v Lindsay* (1878) 3 App Cas 459, HL; *Ingram v Little* [1961] 1 QB 31, [1960] 3 All ER 332, CA. See also PARA 563 text and note 1 post.

11 See the Sale of Goods Act 1979 s 23; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 154.

12 See the Factors Act 1889 s 2; and AGENCY vol 1 (2008) PARA 148. As to transfer of title see generally SALE OF GOODS AND SUPPLY OF SERVICES.

13 See *ibid* ss 8, 9 (s 9 as amended); the Sale of Goods Act 1979 ss 24, 25; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 157-158.

14 *Ibid* s 21(1). See *Henderson & Co v Williams* [1895] 1 QB 521, CA; *Mercantile Bank of India Ltd v Central Bank of India Ltd* [1938] AC 287, [1938] 1 All ER 52, PC. See also ESTOPPEL vol 16(2) (Reissue) PARA 1058 et seq; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 150-151.

15 See ESTOPPEL vol 16(2) (Reissue) PARAS 1059, 1061; but cf *Moorgate Mercantile Co Ltd v Twitchings* [1977] AC 890, [1976] 2 All ER 641, HL (party estopped must owe duty of care to other party); and see *Jerome v Bentley & Co* [1952] 2 All ER 114.

16 See the Sale of Goods Act 1979 s 21; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 150-151. See also PARA 645 post.

17 See the Cheques Act 1957 s 4 (as amended). See also the Banking Act 1979 s 47; PARA 554 ante; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 882-884, 887, 889, 890.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(b) Conversion Upon Demand and Refusal/556. Conversion by detention.

### *(b) Conversion Upon Demand and Refusal*

#### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

#### **555 Wrongful reception**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **556. Conversion by detention.**

The mere unpermitted possession of another's goods does not amount to conversion<sup>1</sup>. It is not conversion merely to be in possession of a chattel without title<sup>2</sup>, as where a finder reduces lost goods into his possession or a bailee holds over after the period of the bailment has expired<sup>3</sup>. However, a conversion may be committed where the goods are unjustifiably detained after a demand for their return<sup>4</sup> or where the claimant otherwise shows that there has been a positive and overt unjustified withholding of the goods from him, such as by asserting a lien<sup>5</sup>.

Wrongful detention was the essence of the cause of action in detinue; in order to establish a wrongful detention<sup>6</sup>, it was usual to prove that the person entitled to the goods had made a demand for their return and that the person in possession or control had refused or failed after a reasonable time to comply with that demand<sup>7</sup>. It seems that conversion will now lie in every case in which detinue was the remedy before it was abolished<sup>8</sup>. It follows that cases governing liability in detinue for a wrongful withholding are now equally indicative of liability in conversion<sup>9</sup>.

Conversion may be established by methods other than demand or refusal, even where goods are detained, but in most cases a refusal will constitute the best means of establishing a conversion of goods withheld by the defendant. A demand and refusal is sufficient evidence of conversion only if at the time of the demand the party who refuses has it in his power to deliver up the article in the condition in which the article is demanded<sup>10</sup>. However, if the party has wrongfully parted with the article, the wrongful parting will in itself have constituted a conversion<sup>11</sup>.

If there is no refusal before proceedings are instituted and there is no other conversion alleged, trover will not lie<sup>12</sup>.

1 *Isaack v Clark* (1615) 2 Bulst 306; *Thorogood v Robinson* (1845) 6 QB 769; *Spackman v Foster* (1883) 11 QBD 99, DC; *Miller v Dell* [1891] 1 QB 468, CA; *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1993] BCLC 1077. The finder or occupier must take reasonable measures to inform the true owner of the finding and present whereabouts of the goods, and take care of them meanwhile: see *Parker v British Airways Board* [1982] QB 1004 at 1017-1018, [1982] 1 All ER 834 at 842-843, CA, per Donaldson LJ; and PARA 555 note 6 ante.

2 *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1993] BCLC 1077.

3 See the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 40. See also note 1 supra; and PARA 555 note 6 ante. As to bailment generally see BAILMENT.

4 *Baldwin v Cole* (1704) 6 Mod Rep 212; *M'Combie v Davies* (1805) 6 East 538; *Alexander v Southey* (1821) 5 B & Ald 247 at 250, per Best J; *Jones v Dowle* (1841) 9 M & W 19; *Burroughes v Bayne* (1860) 5 H & N 296; *Pillot v Wilkinson* (1863) 2 H & C 72 (affd (1864) 3 H & C 345, Ex Ch). See also *Belsize Motor Supply Co v Cox* [1914] 1 KB 244; *Lord Churchill v Whetnall, Lord Aberconway v Whetnall* (1918) 87 L Ch 524; *Alicia Hosiery Ltd v Brown Shipley & Co Ltd* [1970] 1 QB 195, [1969] 2 All ER 504; *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375; *Finlayson v Taylor* (1983) 133 NLJ 720.

5 *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195 at 199, [1993] BCLC 1077 at 1081 per Millett J; cf *Arthur v Anker* [1997] QB 564, [1996] 3 All ER 783, CA; and PARAS 553 note 3 ante, 681 note 4 post.

6 *Clayton v Le Roy* [1911] 2 KB 1031, CA, especially at 1052 per Farwell LJ; *Miller v Dell* [1891] 1 QB 468, CA, where the action was detinue or conversion and the cause of action was held to accrue from the date of demand for documents of title fraudulently taken from the plaintiff and deposited with the defendant's predecessor in title. As to the authority of this case, so far as it relates to the running of time in the case of successive conversions see LIMITATION PERIODS vol 68 (2008) PARAS 987-988. Cf *London Jewellers Ltd v Attenborough* [1934] 2 KB 206 at 214, CA.

7 See *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579 at 584, [1980] 1 WLR 1375 at 1380-1381, per Sir Robert Megarry V-C, citing the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 8. See also the Torts (Interference with Goods) Act 1977 s 2(2); and PARA 548 ante. See also *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184 at 187, [1983] 1 WLR 959 at 962, per Parker J (remedies for detinue in effect preserved by the Torts (Interference with Goods) Act 1977 s 3 (see PARA 653 post), although detinue itself is abolished); *IBL Ltd v Coussens* [1991] 2 All ER 133, CA.

8 When detinue existed as an alternative remedy to conversion, this equation was less complete; whereas an unjustified refusal to deliver goods after a valid demand for them enabled the owner to sue immediately in detinue it was merely evidence of conversion: *Morris v Pugh and Harwood* (1761) 3 Burr 1242 at 1243, per Lord Mansfield; *Edwards v Hooper* (1843) 11 M & W 363 at 367, per Parke B; *Clayton v Le Roy* [1911] 2 KB 1031 at 1052, per Farwell LJ; *Beaman v ARTS Ltd* [1948] 2 All ER 89 at 92, per Denning J (revsd on other grounds [1949] 1 KB 550, CA). Cf *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579 at 583, [1980] 1 WLR 1375 at 1379-1380 per Sir Robert Megarry V-C. Further, this evidence was not conclusive. Thus a defendant might not be liable in trover if he made an offer to restore the goods before action: *Hayward v Seaward* (1832) 1 Moo & S 459. As to trover and the technical meaning acquired by conversion as a distinct form of that action see PARA 542 ante. Therefore notwithstanding *Howard E Perry & Co Ltd v British Railways Board* supra, there may still be exceptional cases in which a wrongful refusal which would have given rise to an action in detinue before detinue was abolished does not amount to a conversion. As to delivery after action brought see PARA 650 post, and as to damages see PARA 615 et seq post.

9 *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195 at 199, [1993] BCLC 1077 at 1081 per Millett J.

10 *Smith v Young* (1808) 1 Camp 439; *Rushworth v Taylor* (1842) 3 QB 699; *Edwards v Hooper* (1843) 11 M & W 363; *Wilkinson v Whalley* (1843) 5 Man & G 590; *Towne v Lewis* (1849) 7 CB 608; *Latter v White* (1872) LR 5 HL 578. A recent case illustrating the proposition stated in the text is *Alicia Hosiery Ltd v Brown Shipley & Co Ltd* [1970] 1 QB 195, [1969] 2 All ER 504, where goods in a warehouse were pledged by their owners to a bank. The warehouse company attorned to the bank but the bank subsequently sent them a delivery order, requiring delivery to certain purchasers. The company then refused to deliver to the purchasers. The bank was held not guilty of detinue because after the delivery of order was received the company was acting in its own interests and the bank's former constructive possession of the goods ceased. The company's possession ceased thereupon to be that of the bank and the bank was not liable for the subsequent detention. The same result would now apply to an action for conversion on the grounds of a wrongful detention. Cf *Harold Stephen & Co Ltd v Post Office* [1978] 1 All ER 939, [1977] 1 WLR 1172, CA.

11 *Edwards v Hooper* (1843) 11 M & W 363. See also PARA 548 ante.

12 *Clayton v Le Roy* [1911] 2 KB 1031, CA, where a writ was issued before any wrongful refusal by the defendant to return a watch, and it was held that there was no conversion. Cf *Baud Corpn NV v Brook* (1974) 40 DLR (3d) 418, Alta App Div (proof of demand and refusal may be unnecessary in action for detinue where defence discloses such an adverse claim to plaintiff's that it is obvious that any demand would have been refused). See also *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195 at 199, [1993] BCLC 1077 at 1081 per Millett J.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(b) Conversion Upon Demand and Refusal/557. What amounts to a demand.

### 557. What amounts to a demand.

The demand for the return of goods must be specific<sup>1</sup>. An oral demand is sufficient<sup>2</sup>. The demand must be made by the owner of the goods or by some person in his name and with his authority<sup>3</sup>. If the demand is made by some person on behalf of the owner, the person on whom the demand is made must have a reasonable opportunity to inquire into the authority of the

person making the demand<sup>4</sup>. The demand must be for delivery up of the goods; a failure by the defendant to dispatch them at the owner's demand is no evidence of a conversion<sup>5</sup>.

1 *Nixon v Sedger* (1890) 7 TLR 112, CA. A general demand on behalf of an executor for the delivery of 'the goods of the deceased' is insufficient: *Nixon v Sedger* *supra*. But a demand of more goods than the claimant is entitled to, if met by a refusal to deliver any of the goods, is sufficient: *Greenslade v Evans* (1848) 12 LTOS 124; *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1993] BCLC 1077.

2 *Smith v Young* (1808) 1 Camp 439. A demand in writing left at the defendant's house during his absence is not sufficient (*King v Walsh* [1932] IR 178), but proof that a written demand was left at the house is *prima facie* evidence that he received it (*Logan v Houlditch* (1793) 1 Esp 22; *King v Walsh* *supra*; cf *Finlayson v Taylor* (1983) 133 NLJ 720). If an oral demand and a demand in writing are made at the same time and the one has no reference to the other, evidence may be given of the oral demand without the production of the writing: *Smith v Young* *supra*. A notice of demand of property is not a notice within the Companies Clauses Consolidation Act 1845 s 135, and is not one that may be served on the secretary of the company under it: *Glover v London and North Western Rly Co* (1850) 5 Exch 66 at 68. As to service of notice upon companies see COMPANIES vol 14 (2009) PARA 671, and COMPANIES vol 15 (2009) PARA 1676.

3 *Gunton v Nurse* (1821) 2 Brod & Bing 447; *Tollit v Shenstone* (1839) 5 M & W 283. When two or more persons who are jointly interested in a chattel deposit it with a stranger, a demand by one in his own name and not on behalf of all will not enable him to sue for its recovery: *Atwood v Ernest* (1853) 13 CB 881; *Harper v Godsell* (1870) LR 5 QB 422. If a person deposits goods with a bailee and there are other persons entitled to a part of the goods those persons are not necessary parties to an action to recover them: *Saville v Tancred* (1748) 3 Swan 141 n.

4 *Solomons v Dawes* (1794) 1 Esp 81; *Toms v Wilson* (1863) 4 B & S 442, Ex Ch; *Clayton v Le Roy* [1911] 2 KB 1031 at 1051, CA, per Fletcher Moulton LJ; *Renwick Garages Ltd v Wills* (16 July 1981, unreported).

5 *Heskell v Continental Express Ltd* [1950] 1 All ER 1033 at 1045. See also *Capital Finance Co Ltd v Bray* [1964] 1 All ER 603, [1964] 1 WLR 323, CA, where it was held that an instruction that the defendant take the goods to the plaintiff would not constitute a sufficient demand to ground an action in detinue unless the defendant had bound himself by contract to do so. See also PARA 558 text to note 7 post. If the defendant has already done an act which amounts to conversion, a demand is not necessary before action in trover: *Lovell v Martin* (1813) 4 Taunt 799; *Wyatt v Blades* (1813) 3 Camp 396; *Forsdick v Collins* (1816) 1 Stark 173; *Grainger v Hill* (1838) 4 Bing NC 212. Cf *Capital Finance Co Ltd v Bray* [1964] 1 All ER 603 at 607, [1964] 1 WLR 323 at 329, CA, per Lord Denning MR, and at 609 and at 332 per Salmon LJ. As to trover and the technical meaning acquired by conversion as a distinct form of that action see PARA 542 ante. An alternative demand, eg to deliver the goods or pay a deposit, is good: *King v Walsh* [1932] IR 178 at 189. See also, as to the unjustified assertion of a lien, *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195 at 199, [1993] BCLC 1077 at 1081 per Millett J.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(b) Conversion Upon Demand and Refusal/558. What amounts to a refusal.

#### 558. What amounts to a refusal.

A qualified or justifiable refusal to deliver up the article demanded is not evidence of conversion<sup>1</sup>. Thus, there is no evidence of conversion where the person in possession of the goods refuses to deliver them up on the ground that he does not know to whom they belong and keeps them until he can ascertain the owner<sup>2</sup>. Similarly, where the goods are in the possession of an employee who refuses to deliver them up without an order from his employer, the employee's refusal is not evidence of conversion by the employer or the employee<sup>3</sup>. Where, on the other hand, the person in possession of the goods refuses to deliver them up on the ground of a claim of right by a third person which is not substantiated<sup>4</sup>, or where he refuses to deliver them up unless the owner complies with some condition which the person in possession has no right to impose<sup>5</sup>, or where he fails, without lawful excuse, to deliver them up<sup>6</sup>, this is evidence of conversion. Thus, if a person who has possession of the goods of another is requested by the owner to send them to a particular place and not only refuses to send them to that place but says generally that he will not deliver them up unless payment of a debt due to him from the owner is guaranteed, the general refusal is evidence of a conversion, even though he might not be bound to send the goods to any particular place<sup>7</sup>. A person may be guilty of conversion when he refuses to deliver up goods until the cessation of an industrial dispute on the grounds that he genuinely and reasonably fears retaliatory action by his employees<sup>8</sup>.

Liability for conversion may follow even though the defendant unequivocally acknowledges the claimant's ownership of the goods if the defendant seeks to detain the goods for an indefinite period<sup>9</sup>.

1 *Solomons v Dawes* (1794) 1 Esp 81; *Evans v Bell* (1847) 10 LTOS 109; *Norton v Blackie* (1864) 13 WR 80; *Jones v Hough* (1879) 5 ExD 115, CA. See also *Roandale v Metropolitan Police Comr* (1979) 123 Sol Jo 128, CA, where it was held that it was permissible to retain publications for a reasonable time before bringing them before a magistrate under the Obscene Publications Act 1959 s 3 (as amended); *Renwick Garages Ltd v Wills* (16 July 1981, unreported); *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1993] BCLC 1077.

2 *Solomons v Dawes* (1794) 1 Esp 81; *Green v Dunn* (1811) 3 Camp 215n; *Pothonier v Dawson* (1816) Holt NP 383; *Canot v Hughes* (1836) 2 Bing NC 448, where the defendant, ignorant of the plaintiff's title, deposited the chattel with his attorney, and it was held that there was no conversion; *Vaughan v Watt* (1840) 6 M & W 492, where there was no conversion by a pawnbroker wishing to ascertain title to the chattel.

3 *Alexander v Southey* (1821) 5 B & Ald 247. As to the liability of employees see PARA 601 post.

4 *Syeds v Hay* (1791) 4 Term Rep 260; *Catterall v Kenyon* (1842) 3 QB 310; *Wilson v Anderton* (1830) 1 B & Ad 450; *Clendon v Dinneford* (1831) 5 C & P 13; *Verrall v Robinson* (1835) 2 Cr M & R 495; *Atkinson v Marshall* (1842) 12 LJ Ex 117, where it was held that setting up a *jus tertii*, or keeping goods in order to maintain the title of a third person, is evidence of conversion; *Caunce v Spanton* (1844) 7 Man & G 903; *Pillott v Wilkinson* (1864) 3 H & C 345, Ex Ch; *Wetherman v London and Liverpool Bank of Commerce Ltd* (1914) 31 TLR 20; *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA. See also PARA 654 notes 5 post. As to *jus tertii* see PARA 644 post.

5 *Binstead v Buck* (1776) 2 Wm Bl 1117, where a dog was demanded from the defendant who had found it straying and refused to deliver it up unless he was paid for its keep; *Loeschman v Machin* (1818) 2 Stark 311; *Cobbett v Clutton* (1826) 2 C & P 471; *Clark v Chamberlain* (1836) 2 M & W 78; *Barnett v Crystal Palace Co* (1861) 2 F & F 443, where it was held that a person who has in his possession the goods of another has no right to retain them until he has a written receipt for them; *Finlayson v Taylor* (1983) 133 NLJ 720, where it was held that *detinue* was committed by the licensor of a certain room in a building, in which the plaintiff was licensed to keep his goods, when the licensor deprived the plaintiff of reasonable access to the goods in breach of an implied term in the licence, failed to comply with a demand by the plaintiff to allow him to enter and retrieve the goods and unjustifiably asserted a lien over the goods for unpaid rent; such conduct would also constitute conversion of the goods. As to the unjustified assertion of a lien see also *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195 at 198-199, [1993] BCLC 1077 at 1081 per Millett J.

6 *Davies v Nicholas* (1836) 7 C & P 339, where the defendant said he would do nothing but what the law required, and failed to deliver goods; this was evidence of conversion; *Atkin v Slater* (1844) 1 Car & Kir 356, where the defendant said he would consult his attorney and it was held that this expression, with the defendant's subsequent conduct in not giving up the deeds, amounted to evidence of conversion; *Adventure Film Productions Ltd v Tully* (1982) Times, 14 October, where an order for delivery was made of film that the defendant said he held in protective custody; *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA,

where an order was made prohibiting the defendants from releasing cables, which the defendants had sold to the plaintiffs and in which the property had passed, to Iran in compliance with a claim of ownership advanced by the Iranian government, in order to avoid adverse consequences to the defendants' interests in Iran. See also *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375; *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA; and PARA 654 post. See also *Finlayson v Taylor* (1983) 133 NLJ 720, where it was held, following *Capital Finance Co Ltd v Bray* [1964] 1 All ER 603 at 607, [1964] 1 WLR 323 at 329, CA, per Lord Denning MR, that where a bailee evinces an intention to keep the goods in defiance of the owner, his detention is adverse and he commits detinue. It may be assumed that such conduct will give rise to liability for conversion after the abolition of detinue by the Torts (Interference with Goods) Act 1977 s 2(1): see PARAS 543-544 ante. As to whether the mere neglect to reply to a demand might have given rise to liability in detinue see *Capital Finance Co Ltd v Bray* supra, at 609 and at 331, per Salmon LJ.

7 *Sharp v Pratt* (1827) 3 C & P 34. Cf *Heskell v Continental Express Ltd* [1950] 1 All ER 1033 at 1045. A bailee is not bound to take steps to redeliver the goods to his bailor unless he has contractually undertaken to do so; his duty is discharged if he makes them available for collection by the bailor: *Capital Finance Co Ltd v Bray* [1964] 1 All ER 603, [1964] 1 WLR 323, CA. See also *Metals and Ropes Co Ltd v Tattersall* [1966] 3 All ER 401, [1966] 1 WLR 1500, CA; and PARA 654 post.

8 *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375. See also *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA; *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA; and PARA 654 note 9 post.

9 See the cases cited in note 8 supra.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/559. Right of possession and property.

### (c) Who may Sue

#### UPDATE

#### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 559. Right of possession and property.

To sue in conversion a claimant must show that he had either possession, or an immediate right to possession, of the chattel at the time of the act in question<sup>1</sup>. Either relationship with the chattel affords the necessary possessory title<sup>2</sup> to sustain a claim for conversion<sup>3</sup>. If either is shown, the claimant need not be the owner of the chattel in order to succeed in conversion; indeed an owner can be liable in conversion to a person who had either possession or the immediate right of possession at the time of the owner's act<sup>4</sup>. An owner whose right to possession is merely suspended or deferred at the critical time<sup>5</sup> cannot sue in conversion because his right of possession is not immediate<sup>6</sup>. The proper action for such an owner is a claim for damage to his reversionary interest<sup>7</sup>. If, however, the bailee under a bailment for a fixed term does an act which is contrary to the essential terms of the bailment, the bailor's right of possession will revive and become immediate, enabling him to sue either the bailee or a third party in conversion<sup>8</sup>. A bailor under a bailment at will retains the immediate right of possession throughout the bailment and can in appropriate circumstances sue either the bailee or a third party for conversion<sup>9</sup>.

1 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA; distinguishing *Healey v Healey* [1915] 1 KB 938 and *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 17, CA. For a claimant to succeed in a claim in conversion he must show that in law he had the requisite possessory title, either actual possession or the right to immediate possession: *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 691 and 677 per Mummery LJ, at 698 and 685 per Pill LJ (semble), and at 701 and 688 per Hobhouse LJ. The legal owner is normally the person entitled to sue for conversion even though he was not in possession at the time of the conversion: *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 701 and 688 per Hobhouse LJ. As to title to sue in conversion see also *Kahler v Midland Bank Ltd* [1950] AC 24, [1949] 2 All ER 621, HL; *Marquess of Bute Ltd v Barclays Bank Ltd* [1955] 1 QB 202 at 212, [1954] 3 All ER 365 at 369 per McNair J (applied in *Lipkin Gorman (a firm) v Karpnale Ltd* [1991] 2 AC 548 at 587, [1992] 4 All ER 512 at 540, HL, and explained in *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 698 and 685 per Pill LJ and at 700 and 687 per Hobhouse LJ); *Sajan Singh v Sardara Ali* [1960] AC 167, [1960] 1 All ER 269, PC; *Commercial Banking Co of Sydney Ltd v Mann* [1961] AC 1, [1960] 3 All ER 482, PC (bank cheques); *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 187, CA, per Ackner LJ; *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337 at 345, [1986] 1 All ER 480 at 484, PC; *Lipkin Gorman (a firm) v Karpnale Ltd* supra. For older authorities see *Gordon v Harper* (1796) 7 Term Rep 9; *Makepeace v Jackson* (1813) 4 Taunt 770; *Crocker v Molyneux* (1828) 3 C & P 470; *Melling v Kelshaw* (1830) 1 Cr & J 184; *Brind v Hampshire* (1836) 1 M & W 365; *Bradley v Copley* (1845) 1 CB 685; *Manders v Williams* (1849) 4 Exch 339; *De Lizardi v Pennell* (1856) 6 E & B 742 (bill of exchange); *Langton v Higgins* (1859) 4 H & N 402; *Latter v White* (1872) LR 5 HL 578; *Barker Furlong* [1891] 2 Ch 172; *Jelks v Hayward* [1905] 2 KB 460; *Union Bank of Australia Ltd v McClintock* [1922] 1 AC 240, PC; *Kearny v Pattinson* [1939] 1 KB 471, CA (bees); cf *Jarvis v Williams* [1955] 1 All ER 108, [1955] 1 WLR 71, CA (detinue). Where a claimant lacks possession at the time of the wrong and relies on the immediate right to possess, applicable legislation may deprive him of that right: see eg *Kahler v Midland Bank Ltd* [1950] AC 24, [1949] 2 All ER 621, HL (possession could have been obtained only by breach of financial regulations); cf *Hesperides Hotels Ltd v Sermet* (1982) Times, 15 March, CA (retrospective legislation in foreign state depriving owners of rights of action in respect of movable property).

An immediate right of possession sufficient to enable the person entitled to sue in conversion can exist notwithstanding the fact that a moratorium on the enforcement of that person's legal rights has arisen, following the making of an administration order under the Insolvency Act 1986 s 11; this is due to the fact that s 11(3)(c) merely imposes a moratorium on the enforcement of a creditor's legal rights and does not destroy them: *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1993] BCLC 1077 (lessors and suppliers of goods on hire purchase suing administrators for conversion by reason of wrongful retention of goods); and see COMPANY AND PARTNERSHIP INSOLVENCY. As to the rights of owners under hire purchase agreements see CONSUMER CREDIT vol 9(1) (Reissue) PARA 25 et seq. Unencumbered ownership of a chattel imports the right to possession: *Clerk v Adam* (1832) 1 Cl & Fin 242, HL. Possession of a chattel is conclusive evidence of the right to possess it unless a superior title is shown to reside elsewhere: see PERSONAL PROPERTY vol 35 (Reissue) PARA 1213. The rules as to the relation back of the claimant's title to sue for conversion are the same as for trespass (see PARAS 519 ante, 662 post): *Elliott v Kemp* (1840) 7 M & W 306. As to the application of the doctrine of relation back to administrators see EXECUTORS AND ADMINISTRATORS. As to the right of one co-owner to sue another for conversion see PARA 604 post.

2 The collective phrase 'possessory title' is used in *Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd, The Aliakmon* [1986] AC 785 at 809, [1986] 2 All ER 145 at 149, HL, per Lord Brandon of Oakbrook, as denoting a sufficient relation with the chattel to enable the person entitled to sue in tort for negligence inflicted on the chattel. However, the phrase has also been used in regard to actions in conversion: see eg *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 701, [1998] 2 BCLC 659 at 688, CA, per Hobhouse LJ; and cf *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337 at 345, [1986] 1 All ER 480 at 484, PC.

3 Or for negligence: see *Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd, The Aliakmon* [1986] AC 785, [1986] 2 All ER 145, HL; *Transcontainer Express Ltd v Custodian Security Ltd* [1988] 1 Lloyd's Rep 128 at 138, CA, obiter per Slade LJ; *The Hamburg Star* [1994] 1 Lloyd's Rep 399 at 403-405 per Clarke J (point arguable).

4 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 686, [1998] 2 BCLC 659 at 671, CA, per Mummery LJ, reciting on this point a proposition of counsel for the plaintiffs accepted as common ground, and also citing *Roberts v Wyatt* (1810) 2 Taunt 268; *City Motors (1933) Pty Ltd v Southern Aerial Super Service Pty Ltd* (1961) 106 CLR 477, Aust HC; *Nyberg v Handelaar* [1892] 2 QB 202, CA (legal ownership does not necessarily qualify the holder to sue, nor does it preclude a conversion claim against him, for a legal owner can be sued in conversion by a person having a subsisting right to the immediate right of possession). Compare the relation with a chattel which suffices for a claim in tort for negligence: *Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd, The Aliakmon* [1986] AC 785 at 809, [1986] 2 All ER 145 at 149, HL, per Lord Brandon of Oakbrook (legal ownership or possessory title).

5 Eg the lessor for a fixed term.

6 *Gordon v Harper* (1796) 7 Term Rep 9; and see PARA 559 post. A fortiori, a person who has, at the time of the wrong, been deprived of his property in the goods under one of the statutory exceptions to the principle *nemo dat quod non habet* (see PARA 575 post; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 150), or who has otherwise parted with his property, is unlikely to be entitled to sue in conversion because he will ordinarily have no continuing right to possess: see *Emanuel v Dane* (1812) 3 Camp 299; *Hornblower v Proud* (1819) 2 B & Ald 327; *Hunter v Westbrook* (1827) 2 C & P 578; *Armstrong v Allan Bros* (1892) 67 LT 738, CA; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA; cf *Jarvis v Williams* [1955] 1 All ER 108, [1955] 1 WLR 71, CA (detinue). As to an unpaid vendor see PARA 574 post. Full residual property in the goods is not essential to a claim in conversion if possession or an immediate right of possession can be shown: see note 1 supra. If a person agrees to make an article for a customer, property does not ordinarily pass to the customer (and the buyer cannot therefore sue in conversion) until the article is finished and delivered to him (*Mucklow v Mangles* (1808) 1 Taunt 318; *Goode v Langley* (1827) 7 B & C 26; *Tripp v Armitage* (1839) 4 M & W 687) unless the contract provides otherwise: *Woods v Russell* (1822) 5 B & Ald 942; *Reid v Fairbanks* (1853) 13 CB 692. As to the time at which property passes on a sale of goods generally see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 109 et seq. The passing of property in goods may enable the new proprietor to sue in conversion before the completion of some contemplated collateral transaction: see eg *North West Securities Ltd v Alexander Breckon Ltd* [1981] RTR 518, CA (finance company acquired title to goods from dealer before execution of hire purchase agreement and could sue for a conversion committed before the hire purchase agreement became effective). As to the right of an incoming owner of goods to sue for acts of conversion committed before he became entitled to them see *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* supra; and PARA 560 post.

7 See PARA 566 post.

8 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 686, [1998] 2 BCLC 659 at 671, CA, per Mummery LJ. See also PARA 569 post; and BAILMENT vol 3(1) (2005 Reissue) PARAS 85, 88.

9 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 686, [1998] 2 BCLC 659 at 671, CA, per Mummery LJ; and see PARA 569 post; and BAILMENT vol 3(1) (2005 Reissue) PARAS 85, 88.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/560. Contractual right of possession.

### 560. Contractual right of possession.

It appears that a mere contractual right to possess will suffice to sue in conversion, and that the claimant's right of possession need not derive from a proprietary interest in the chattel<sup>1</sup>. Whatever the source of the right to possession, however, the claimant who relies on such a right (as opposed to relying on possession itself)<sup>2</sup> puts the strength of his title in issue and can be defeated if he fails to substantiate that right<sup>3</sup>. Having established a right to possession, however, the claimant can recover at common law the full value of the chattel converted and not merely to the extent of his interest or loss<sup>4</sup>. In this respect, his position resembles that of the claimant who relies on possession<sup>5</sup>.

1 *International Factors Ltd v Rodriguez* [1979] QB 351 at 359-360, [1979] 1 All ER 17 at 22, CA, per Buckley LJ; cited with approval in *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 690, [1998] 2 BCLC 659 at 676, CA, per Mummery LJ, at 697 and 684 per Pill LJ, and at 700-701 and 687-688 per

Hobhouse LJ (semble); but cf *International Factors Ltd v Rodriguez* [1979] QB 351 at 357, [1979] 1 All ER 17 at 20, CA, per Sir David Cairns (Bridge LJ concurring) relying on *Jarvis v Williams* [1955] 1 All ER 108, [1955] 1 WLR 71, CA, a case of detinue (right of possession must stem from a proprietary right in order to ground a claim for conversion). The observations of Sir David Cairns on this point were cited without specific disapproval in *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 700 and 687 per Hobhouse LJ. Cf the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 9 (whereas the requirement of a right of property in the goods is clearly supported by authority in cases of detinue, its extension to conversion is questionable). For modern authority which states the requirement of an immediate right of possession as grounds to sue in conversion without reference to the further requirement of property see *Harris v Lombard New Zealand Ltd* [1974] 2 NZLR 161 at 165-166 per McMullin J (distinguishing conversion and detinue for this purpose); *Winkworth v Christie, Manson & Woods Ltd* [1980] Ch 496 at 499, [1980] 1 All ER 1121 at 1124 per Slade J (who appears to discard the requirement of a proprietary interest in both detinue and conversion); *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 187, CA, per Ackner LJ; and see *Lipkin Gorman (a firm) v Karpnale Ltd* [1991] 2 AC 548 at 587, [1992] 4 All ER 512 at 540, HL, per Lord Goff of Chieveley (plaintiff solicitors had immediate right to possession against any other person of banker's draft payable to them; such right of possession gave solicitors sufficient title to sue in conversion). Cf *Mayflower Foods Ltd v Barnard Bros Ltd* (9 August 1996, unreported); and see Palmer 'Possessory Title' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) Ch 3.

2 *The Winkfield* [1902] P 42, CA; and see PARA 566 post.

3 *Butler v Hobson* (1838) 4 Bing NC 290; *Leake v Loveday* (1842) 4 Man & G 972; *Gadsden v Barrow* (1854) 9 Exch 514; and see *Buckley v Gross* (1863) 3 B & S 566.

4 *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC; and see PARA 575 post. The defendant may be entitled to join other parties to the proceedings, and to have the various interests in the chattel distributed in a single judgment: see the Torts (Interference with Goods) Act 1977 s 8(1); and PARA 644 post. A person having the immediate right of possession to a chattel will not recover damages calculated according to its full value even at common law, and will be limited to a sum representing the value of, or cost of damage to, his personal interest, where the wrongdoer has a cross-claim or right of set-off against the claimant arising out of the same or a connected transaction (*Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* supra at 345 and 484) or where an award of full damages would otherwise lead to circuity of actions (*Maynegrain Pty Ltd v Compania Bank* (1984) 58 ALJR 389, PC) or where the wrongdoer himself has an interest in the goods (*Brierly v Kendall* (1852) 17 QB 937; and see *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 686, [1998] 2 BCLC 659 at 671, CA, per Mummery LJ) or where the defendant commits the disputed act or defends the claim with the authority of the true owner or where the defendant has, since the act, become the owner of the goods (*Eastern Construction Co Ltd v National Trust Co Ltd and Schmidt* [1914] AC 197 at 210, PC; *Webb v Ireland and A-G* [1988] IR 353, Ir SC).

5 *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC; applying *The Winkfield* [1902] P 42, CA.

## UPDATE

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### 561. Equitable property.

Mere equitable property in chattels<sup>1</sup> does not suffice to sue in conversion<sup>2</sup>. The claim in conversion lies at common law and requires a common law (or legal) interest<sup>3</sup>. Where trust

chattels are wrongfully interfered with, the law of conversion recognises only the title of the trustee, who is both the legal owner and the person normally entitled to possession of the trust property<sup>4</sup>. This exclusion of the equitable owner reflects a general rule that, if a claimant has only an equitable right in the thing demanded, the person having the legal right to demand it must be made a party to the claim<sup>5</sup>. Where the beneficiary of a trust of chattels fails to join the trustee as a party and cannot show that his equitable interest is accompanied by possession or an immediate right of possession, his claim in conversion must fail<sup>6</sup>. In those cases where an equitable proprietor has successfully sued in conversion, the equitable interest was fortified by a possessory title<sup>7</sup>.

1 Such as that of a beneficiary under a trust: see generally TRUSTS.

2 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA, explaining *Healey v Healey* [1915] 1 KB 938, and *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 1, CA (beneficiaries of a trust of shares assigned their equitable interest to plaintiffs; trustees then wrongfully pledged same shares to defendants, who sold them; plaintiffs, without joining trustees, sued defendants in conversion; the claim failed, the Court of Appeal holding that, while that the pledge was theoretically capable of being a conversion by both trustees and defendants, the plaintiffs had no title to sue, as they could not show that they had the required possession or right to possession at the time of the pledge; mere equitable property unaccompanied by either of those qualifications insufficient).

3 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 701, [1998] 2 BCLC 659 at 688, CA, per Hobhouse LJ (a strict legal remedy cannot be combined with a mere equitable right). The necessary interest exists where the claimant had either possession, or an immediate right to possession, of the chattel at the time of conversion: see PARA 559 ante.

4 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 687, 691, [1998] 2 BCLC 659 at 673, 677-678, CA, per Mummery LJ, at 697-698 and 684-685 per Pill LJ, and at 700-701 and 687-688 per Hobhouse LJ.

5 *Performing Right Society Ltd v London Theatre of Varieties Ltd* [1924] AC 1 at 14, HL, per Viscount Cave LC; cited in *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 688-689, [1998] 2 BCLC 659 at 673-675, CA, per Mummery LJ. A fortiori, therefore, conversion is not maintainable by an equitable owner against one who has acquired the legal title to the goods as a bona fide purchaser for value without notice of the prior equitable claim. In that event: (1) the equitable interest has been overreached and extinguished; (2) it is irrelevant that the disposition to the bona fide purchaser was in breach of trust and/or unauthorised, since legal title passes to the bona fide purchaser notwithstanding those facts: *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 687 and 673 per Mummery LJ, and at 701 and 688 per Hobhouse LJ. The fusion of law and equity has not enabled mere equitable interests to ground common law causes of action: *Joseph v Lyons* (1884) 15 QBD 280, CA; *Hallas v Robinson* (1885) 15 QBD 288, CA; *Performing Right Society Ltd v London Theatre of Varieties Ltd* supra at 14 per Viscount Cave LC; *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 690-691 and 676-677 per Mummery LJ, at 698 and 685 per Pill LJ, and at 700-701 and 687-688 per Hobhouse LJ. The contrary view of Sir David Cairns in *International Factors Ltd v Rodriguez* [1979] 1 All ER 17 at 20, [1979] QB 351 at 357, CA (Bridge LJ concurring at 21, 359) was expressed without the benefit of citation of these authorities, was unnecessary to the decision and should not be followed: *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 690-691 and 676-677 per Mummery LJ, at 698 and 685 per Pill LJ, and at 700-701 and 687-688 per Hobhouse LJ. The fusion of law and equity does not transform equitable interests into legal titles, or abolish such common law rules as the need for possession or an immediate right to possess in the claimant in conversion, or make equitable title a ground for common law claim; dealings which do not infringe the legal rights of others cannot give rise to legal liabilities, for it is of the character of legal remedies that they derive from legal rights: *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 701 and 688 per Hobhouse LJ, who further remarked that that is one reason why common law remedies (in contradistinction to equitable rights) are not discretionary and may impose strict liability on innocent parties. One aspect of this difference is the rule now reflected in the Torts (Interference with Goods) Act 1977 s 5 (see PARA 655 post) that payment of full damages in conversion confers full title; for if the claimant had only an equitable interest, and the good faith acquirer's title is already complete in law and in equity, 'how is this principle to operate?': *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 701 and 689 per Hobhouse LJ.

6 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 689, [1998] 2 BCLC 659 at 675, CA, per Mummery LJ (citing *Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd, The Aliakmon* [1986] 2 All ER 145 at 151, [1986] AC 785 at 812, HL, per Lord Brandon of Oakbrook); and see *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 700 and 687-688 per Hobhouse LJ.

7 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 687-691, [1998] 2 BCLC 659 at 673-677, CA, per Mummery LJ, at 698 and 685 per Pill LJ, and at 700-701 and 687-688 per Hobhouse LJ. In *Healey v Healey* [1915] 1 KB 938, the plaintiff wife had both actual possession and the immediate right to possession of the chattels when they were taken from her (at 940 per Shearman J) and the decision was 'squarely based on the wife's title to the immediate possession': *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 689 and 675 per Mummery LJ. In *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 17, CA, the plaintiffs had an accompanying immediate right of possession under the debt factoring agreement which entitled them to have the cheques 'handed directly to them': see at 359-360 and 22 per Buckley LJ. See also *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 690 and 676 per Mummery LJ and at 697-698 and 684-685 per Pill LJ. A similar analysis might be applied to *Maynegrain Pty Ltd v Comapafina Bank* (1984) 58 ALJR 389, PC, where Lord Templeman (at 394) referred to the plaintiff bank as the equitable pledgees of the disputed barley but at no point considered (apparently because it was not argued) that the bank's action in conversion against the defendant warehousemen who had allegedly released it without the bank's authority was objectionable on grounds that the interest was merely equitable. If the characterisation of the plaintiff's interest as equitable was correct, the answer to this objection may have been that the plaintiffs (like those in *Healey v Healey* supra and *International Factors Ltd v Rodriguez* supra) had a sufficient possessory title to ground conversion. In the event, the action failed because the plaintiffs had, through their agents, consented to the release, Lord Templeman evidently treating this as a case of undisclosed principal and regarding as material the fact that the defendants were unaware of the plaintiffs' interest; for general criticism: see Palmer 'The Vindication of Commercial Security over Commodities: Equitable Pledges and Conversion' [1986] Lloyd's Maritime and Commercial Law Quarterly 218. As to equitable pledge see Palmer *Bailment* (2nd Edn, 1991) pp 1398-1400. In *MCC Proceeds Inc v Lehman Bros International (Europe)* supra, the Court of Appeal held that clause 3 of the relevant nominee agreement, by which the trustees of shares undertook to transfer the property on demand to the beneficiaries or such other party as the beneficiaries directed, did not give the plaintiffs the necessary right of immediate possession; an immediate right of possession does not arise merely because the governing agreement entitles a beneficiary to demand immediate transfer of the legal title; and until such demand is made (and while the trusteeship continues) the legal owner can still confer title on a third party: see at 697 and 684 per Pill LJ. The trustees had acquired the share certificates as part of a transaction which conferred on it legal ownership of the shares and, as legal owners, could until such demand deal lawfully both in the shares and in the certificates as an incident of that title. Conversely, the third party, having dealt with the owner of the shares, acquired the certificates as part of that transaction: see *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 702 and 689-690 per Hobhouse LJ, who said that the legality of the dealing with the shares covered the legality of the dealing with the certificates. Cf *Stroud Architectural Systems Ltd v John Laing Construction Ltd* (1993) 35 ConLR 135 at 145 (plaintiffs' claim for conversion, based on their purported retention of 'equitable and beneficial ownership' in building components supplied by them, failed because, through the failure of a third-party charge to become specific, no right of possession had crystallised; Judge Newey QC accepted in principle, in the light of the judgments of Sir David Cairns and Bridge LJ in *International Factors Ltd v Rodriguez* supra, that 'an equitable interest in goods coupled with a right to possess them is sufficient to enable a valid claim to be made in conversion'.

## UPDATE

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### 562. Antecedent wrongs.

A person who acquires property in a chattel which has already been the subject of an act of conversion cannot generally sue the wrongdoer in respect of that antecedent conversion<sup>1</sup>. The law of conversion requires that the claimant have either possession of, or the right to possess, the chattel at the time of the disputed act<sup>2</sup>. This prohibition on suing for antecedent wrongs

applies irrespective of whether the person who owned the chattel at the time of the conversion has himself recovered damages from the wrongdoer<sup>3</sup>. In appropriate circumstances, however, the incoming owner of the chattel may be entitled to sue for a conversion committed after the property has passed to him, as where a bailee (who has lost the bailed goods during the ownership of the former owner) fails to deliver them to the succeeding owner in response to a lawful demand made by him after property has passed to him<sup>4</sup>. Such a claim will succeed at least where the goods are still in existence at the time of the new owner's demand that they be delivered to him<sup>5</sup>. In general, courts are reluctant to allow a bailee to avoid responsibility for the loss or destruction of goods by asserting his own wrongful act or omission<sup>6</sup>, and may look favourably on claims where the deficiency of the new owner's position could be cured by joining the former owner as party to the claim<sup>7</sup>.

1 *The Future Express* [1993] 2 Lloyd's Rep 542, CA, approving *Margarine Union GmbH v Cambay Prince Steamship Co Ltd*, *The Wear Breeze* [1969] 1 QB 219, [1967] 3 All ER 775, and explaining *Bristol and West of England Bank v Midland Rly Co* [1891] 2 QB 653, CA; *London Joint Stock Bank Ltd v British Amsterdam Trading Agency Ltd* (1910) 16 Com Cas 102; *Hannam v Arp* (1928) 30 Li L Rep 306, CA; sed quaere cf *Goodman v Boycott* (1862) 2 B & S 1. See also *Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd*, *The Aliakmon* [1986] AC 785, [1986] 2 All ER 145, HL (which also approved *Margarine Union GmbH v Cambay Prince Steamship Co Ltd*, *The Wear Breeze* supra); and *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA (sellers sold goods to buyers under c & f contract confirmed by a letter of credit opened by the buyers' bank; the bank, relying on a false assurance by the sellers that the goods were still in transit to the buyers, paid the price after the vessel carrying the goods had been diverted on the sellers' orders; later the bank validly rejected the documents, causing property to revest in the sellers; held, the buyers, having neither possession nor the immediate right to possession at the time of the alleged conversion, could not sustain an action for conversion against the sellers, though Ackner LJ remarked at 187 that the buyers might well have had such a claim but for the rejection of the documents; held further, that when the buyers subsequently presented the documents to the sellers' bank, this did not entitle the buyers to complain retrospectively of the sellers' prior dealings; the argument that the sellers owed a duty not to convert goods which were about to become the property of the buyers was a novel doctrine, unsupported by authority, which could not be accepted: see at 187 per Ackner LJ).

2 See PARA 559 ante. Cf *Williams v A-G* [1990] 1 NZLR 646.

3 *The Future Express* [1993] 2 Lloyd's Rep 542, CA. The recovery of such damages would discharge the converter from further liability in respect of the relevant conversion: cf *The Winkfield* [1902] P 42, CA; and see the Torts (Interference with Goods) Act 1977 s 7 (avoidance of double liability); and PARA 637 post.

4 *The Future Express* [1993] 2 Lloyd's Rep 542 at 548-549, CA, obiter per Lloyd LJ, approving *Margarine Union GmbH v Cambay Prince Steamship Co Ltd*, *The Wear Breeze* [1969] 1 QB 219, [1967] 3 All ER 775, and explaining *Bristol and West of England Bank v Midland Rly Co* [1891] 2 QB 653, CA; *London Joint Stock Bank Ltd v British Amsterdam Trading Agency Ltd* (1910) 16 Com Cas 102; *Hannam v Arp* (1928) 30 Li L Rep 306, CA. Cf, however, *Goodman v Boycott* (1862) 2 B & S 1. As to successive conversions see PARA 636 post.

5 *Goodman v Boycott* (1862) 2 B & S 1 at 8 per Wightman J.

6 *Goodman v Boycott* (1862) 2 B & S 1 at 8 per Wightman J; *Bristol and West of England Bank v Midland Rly Co* [1891] 2 QB 653 at 661, CA, per Lindley LJ, at 663 per Fry LJ and at 665 per Lopes LJ.

7 *The Future Express* [1993] 2 Lloyd's Rep 542 at 548-549, CA, per Lloyd LJ citing *Bristol and West of England Bank v Midland Rly Co* [1891] 2 QB 653 at 661, CA, per Lindley LJ, and at 664 per Fry LJ.

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### **563. Void and voidable contracts.**

If the owner of goods is induced by a person's fraud to enter into a purported contract to dispose of goods to that other person, and transacts on the basis of a fundamental mistake as to identity, believing the contract to be with someone other than the person with whom he deals, there is no contract; no property, therefore, passes, and the owner of the goods may sue that person or any person in possession of the goods for conversion, even if the person in possession has obtained the goods in good faith and without notice of the fraud<sup>1</sup>.

If an owner of goods is induced by fraud to enter into a voidable contract with another person, the owner is entitled to repudiate the transaction, and may then sue that person, or any agent of his or any person in possession of the goods who has taken them with notice of the fraud or otherwise than for value and without notice, for conversion<sup>2</sup>. However, a third person who, before repudiation, takes the goods in good faith for value and without notice of the fraud acquires a good title<sup>3</sup>.

1 *Kingsford v Merry* (1856) 1 H & N 503, Ex Ch; *Hardman v Booth* (1863) 1 H & C 803; *Cundy v Lindsay* (1878) 3 App Cas 459, HL; *Ingram v Little* [1961] 1 QB 31, [1960] 3 All ER 332, CA. See also *Irving v Motley* (1831) 7 Bing 543. Where the owner intends to deal with a person, but is deceived by fraud as to his name and status, the contract is voidable only: *Phillips v Brooks Ltd* [1919] 2 KB 243. See also MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 783. In most cases of a sale transacted between two parties dealing face to face, the contract will be voidable only: *Lewis v Averay* [1972] 1 QB 198, [1971] 3 All ER 907, CA. See also *Whittaker v Campbell* [1984] QB 318, [1983] 3 All ER 582; *Thomas v Heelas* (1986) Lexis, Enggen Library, Cases File, CA; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 310. See also SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 155.

2 *Re Eastgate, ex p Ward* [1905] 1 KB 465. As to the avoidance of contracts on the ground of fraud see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 154. As to rescission generally see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 812 et seq. As to obtaining property by fraud see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 310.

3 See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 154.

### **UPDATE**

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### **564. Fraud on the part of the owner.**

No person can maintain a claim to set aside a completed transaction involving fraud to which he was a party<sup>1</sup>. However, if an owner of goods hands them over to another person with a fraudulent purpose which is not carried out, the owner may repudiate the transaction and demand the goods back, and on refusal may sue the person to whom the goods were handed over for conversion, and he has the like remedies against a third person who has received the goods with knowledge of the fraudulent purpose<sup>2</sup>. Similarly, if a claimant can assert his right to possession other than by founding it on the illegal transaction by which he transferred the goods<sup>3</sup> or obtained them<sup>4</sup>, he can recover.

1 *De Wütz v Hendricks* (1824) 2 Bing 314; *Jones v Yates* (1829) 9 B & C 532. See generally CONTRACT. The rule applies not only to the owner himself, but also to those claiming under him: *Jones v Yates* supra. As to claims for rescission generally see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 812 et seq.

2 *Taylor v Bowers* (1876) 1 QBD 291, CA; *Tribe v Tribe* [1996] Ch 107, [1995] 4 All ER 236, CA.

3 *Bowmakers Ltd v Barnet Instruments Ltd* [1945] KB 65, [1944] 2 All ER 579, CA; *Belvoir Finance Co Ltd v Harold G Cole & Co Ltd* [1969] 2 All ER 904, [1969] 1 WLR 1877.

4 *Sajan Singh v Sardara Ali* [1960] AC 167, [1960] 1 All ER 269, PC, where the plaintiff had been in actual possession; *Belvoir Finance Co Ltd v Stapleton* [1971] 1 QB 210, [1970] 3 All ER 664, CA, where illegal contracts were fully executed thus passing property to the plaintiffs. As to transfer of ownership under an illegal contract see CONTRACT vol 9(1) (Reissue) PARA 880 et seq.

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### 565. Theft.

If goods, excluding money or negotiable securities<sup>1</sup>, are stolen, the theft or any subsequent disposition of the goods effects no change in the property<sup>2</sup>, and the owner may sue in conversion the thief or any person into whose hands the goods pass<sup>3</sup>, except the police authorities holding the goods for the purposes of a prosecution or a person entrusted by the police with the custody of the goods while the prosecution is pending<sup>4</sup>.

When a prosecution has determined, the police authorities may not detain property from the true owner unless within a reasonable time they apply to a magistrates' court for an order for the delivery of the property to its apparent owner<sup>5</sup>. Any such order creates a title in the person to whom it is ordered the property be delivered<sup>6</sup> which is defeasible at the suit of the true owner within six months<sup>7</sup>. The police appear to hold such property as bailees<sup>8</sup>, but public policy may preclude a claim in tort for negligence against them in the particular circumstances<sup>9</sup>. Regulations may be made for the disposal or retention of property where the owner has not been ascertained and no other court order has been made with respect thereto<sup>10</sup>.

1 See the Sale of Goods Act 1979 s 61; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 30. A gold coin sold as a collector's item may be goods: *Moss v Hancock* [1899] 2 QB 111.

2 The rule of law relating to the sale of goods in market overt, whereby property in stolen goods did pass, was abolished by the Sale of Goods (Amendment) Act 1994 s 1: see MARKETS, FAIRS AND STREET TRADING.

3 The owner of stolen goods may be estopped by his subsequent negligence or other conduct from setting up his title to the goods: *Beckwith v Corral* (1826) 3 Bing 444; *Morrison v Buchanan* (1833) 6 C & P 18; and see ESTOPPEL.

If the stolen property consists of money, no claim for conversion may be brought (see PARA 547 ante), but the thief or any person who received money from him otherwise than for value can be sued for money had and received (*Lipkin Gorman (a firm) v Karpnale* [1991] 2 AC 548, [1992] 4 All ER 512, HL; and see RESTITUTION vol 40(1) (2007 Reissue) PARA 5). If the stolen property is a negotiable security, the thief or anyone claiming under him, other than a holder in due course or person claiming in good faith under such a holder, may be sued for conversion: see PARA 554 ante. If the thief has bought goods with stolen money, the thief has no claim for conversion if the owner of the money detains the goods from him: *Cattley v Lowndes* (1885) 2 TLR 136, DC (the money could be followed into the goods).

4 *Tyler and Witt v London and South Western Rly Co* (1884) Cab & El 285.

5 See the Police (Property) Act 1897 s 1(1) (as amended); and POLICE vol 36(1) (2007 Reissue) PARA 520. This provision does not apply if the property is in the hands of Customs and Excise: *R v Southampton Magistrates' Court, ex p Newman* [1988] 3 All ER 669 at 671 per Macpherson J. 'Property' means personal and not real property (*R v Khan* [1982] 1 WLR 1405, 76 Cr App Rep 29, CA); the word takes its meaning from the Act in which it is found (*Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014 at 1051, HL, per Lord Porter). As to the meaning of 'owner' in the Police (Property) Act 1897 s 1 (as amended) see *Raymond Lyons & Co Ltd v Metropolitan Police Comr* [1975] QB 321, [1975] 1 All ER 335, DC, where it was also said that the statute is not to be used as a means of disposal of property when any real difficulty as to title or identity of owner is involved. See also *Chief Constable of West Midlands v White* (1993) 157 JP 222; *R v Basildon Justices, ex p Holding and Barnes plc* (1994) 158 JP 980, [1994] RA 157.

Pending an application by the police under the Police (Property) Act 1897 s 1(1) (as amended), the owner cannot sue the police authorities for the recovery of the property: *Bullock v Dunlap* (1877) 2 ExD 43, CA (decided under earlier similar legislation). If no such application is made, a policeman who, after the prosecution is determined, detains the property from the owner or hands it over to any claimant other than the owner is liable to a claim by the owner, even if he acted under the order of his superiors: *Winter v Bancks* (1901) 17 TLR 446. Such a claim may be brought by the owner, even if the person accused of the theft has been tried and acquitted: *Winter v Bancks* supra.

6 *Irving v National Provincial Bank Ltd* [1962] 2 QB 73, [1962] 1 All ER 157, CA.

7 See the Police (Property) Act 1897 s 1(2); and POLICE vol 36(1) (2007 Reissue) PARA 520. A person who was in possession of the goods before they were taken from him by the police and who then seeks within six months of the order to recover them by proceedings cannot rely upon his prior possession alone as grounding any presumption of ownership but must satisfy the court independently that he is the lawful owner: *Irving v National Provincial Bank Ltd* [1962] 2 QB 73, [1962] 1 All ER 157, CA.

An application under the Police (Property) Act 1897 s 1(2) for the recovery of property which is in the possession of the police by virtue of an order under the Powers of Criminal Courts Act 1973 s 43 (as amended) depriving an offender of the property because it was used or intended for use for crime (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 481), may not succeed unless the plaintiff satisfies the court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used for the purpose of the relevant offence: s 43(4)(b) (amended by the Criminal Justice Act 1988 ss 69(1), 170(1), Sch 15 paras 38, 41). However, it was held that a claimant might circumvent this provision by bringing an action in detinue on simple proof of ownership; and presumably a claim for conversion will equally lie irrespective of whether the claimant fulfils the statutory conditions: *Davis v Hampshire Police Authority* [1978] CLY 3024, Crown Court at Winchester. Cf, however, *American Express Co v British Airways Board* [1983] 1 All ER 557, [1983] 1 WLR 701. Since the enactment of the CPR, an action is now known as a claim, and a plaintiff as a claimant: see CIVIL PROCEDURE vol 11 (2009) PARA 18. As to the abolition of actions for detinue, and the subsumption of such actions in the wider tort of conversion, see PARA 542 ante.

As to the award of costs in proceedings under the Police (Property) Act 1897 see *R v Uxbridge Justices, ex p Metropolitan Police Comr* [1981] QB 829, [1981] 3 All ER 129, CA. As to compensation orders in criminal proceedings and their effect on subsequent awards of damages in civil proceedings see PARAS 682-683 post.

8 *R v Uxbridge Justices, ex p Metropolitan Police Comr* [1981] QB 829, [1981] 3 All ER 129, CA. See also PARA 609 post. As to bailment generally see BAILMENT.

9 See PARA 609 post.

10 See the Police (Property) Act 1897 s 2 (as amended); the Police (Property) Regulations 1997, SI 1997/1908; and the Police (Property) (Northern Ireland) Regulations 1997, SI 1997/448.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

## **565 Theft**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 7--1973 Act s 43 (as amended) now Powers of Criminal Courts (Sentencing) Act 2000 ss 143, 144.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/566. Loss of actual possession.

### **566. Loss of actual possession.**

A person in possession of goods is presumed, in the absence of evidence to the contrary, to be entitled to their possession<sup>1</sup>. That entitlement does not cease merely because the goods are wrongfully taken from the possessor<sup>2</sup>, or because he loses or bails them<sup>3</sup>. In addition to suing any person who wrongfully dispossesses him of the goods<sup>4</sup>, the former possessor may rely on his continuing right of possession to sue in conversion any other person who detains or otherwise deals in the goods, contrary to that continuing right<sup>5</sup>. The claim in conversion may lie irrespective of whether the defendant was instrumental in the possessor's original deprivation of possession<sup>6</sup>, or of whether the possessor's right of possession is accompanied by residual ownership<sup>7</sup>. A person whose possession of goods is unlawful can sue in conversion any person (apart from the owner or other person entitled to possession) who dispossesses him of the goods without his consent<sup>8</sup>; but he cannot, having lost possession, rely on that former possession to sue in conversion someone other than the original dispossessor who deals in the goods without his consent<sup>9</sup>.

1 See PERSONAL PROPERTY vol 35 (Reissue) PARA 1222.

2 For example, where a search warrant is issued without jurisdiction: *Quinn v Pratt* [1908] 2 IR 69. Where goods are lawfully taken out of a person's possession pursuant to a valid search warrant, but criminal proceedings relating to the goods are in the event not instituted or are discontinued, the goods must normally be returned to the former possessor, who can sue in conversion to enforce that obligation, for in that event the former possessor's immediate right of possession revives once the purpose underlying the dispossession ceases: see *Ghani v Jones* [1970] 1 QB 693 at 709, [1969] 3 All ER 1700 at 1705, CA, per Lord Denning MR ('as soon as the case is over, or it is decided not to go on with it, the article should be returned'). See also *Russell v Wilson* (1923) 33 CLR 538, Aust HC; *Chairman, National Crime Authority v Flack* (1998) 156 ALR 501, Aust Fed Ct.

3 As to finding see PARA 568 post; and BAILMENT vol 3(1) (2005 Reissue) PARA 11 et seq. As to treasure see NATIONAL CULTURAL HERITAGE VOL 77 (2010) PARA 1084 et seq; CROWN PROPERTY vol 12(1) (Reissue) PARA 373. Where a possessor of goods vacates possession of them in favour of a bailee (as where an existing bailee of goods sub-bails them, or a finder of goods delivers them to an artificer to be valued) the person conferring possession on the bailee (namely the bailor) retains a right of possession to the goods and can (provided the right to possession is immediate) sue the bailee in conversion if he detains or otherwise deals with the goods without his consent; the bailee is at common law precluded from pleading the right of a third party and cannot raise in his defence the fact that a person other than the bailor has a superior right to the goods: see PARA 569 post; and BAILMENT vol 3(1) (2005 Reissue) PARA 85 et seq. As to sub-bailment see also BAILMENT vol 3(1) (2005 Reissue) PARA 41; and as to finders see *Armory v Delamirie* (1722) 1 Stra 505. The bailee in these situations may, however, now invoke statutory procedures to show that someone other than the claimant has a better right to the goods: see the Torts (Interference with Goods) Act 1977 s 8(1); and PARA 644 post. Where an owner of goods or other person entitled to their possession bails the goods to another for a set period, the bailor has a mere reversionary interest in the goods and not an immediate right of possession such as to enable him to sue the bailee or other wrongdoer in conversion, and must bring a claim for enduring damage to that reversionary interest: see PARA 569 post. But the bailor's right to immediate possession may revive where the bailee commits an act contrary to the essential or fundamental terms of the bailment, in which event the bailor may be entitled to sue in conversion: see PARA 569 post. A person having an immediate right to the possession of goods may be estopped by reason of his conduct from asserting that right in a claim for conversion: see ESTOPPEL vol 16(2) (Reissue) PARAS 1061-1064; cf PARA 645 post (mere putting of another person into possession of one's goods does not create estoppel against asserting one's title).

4 See PARA 601 et seq post. See also *The Winkfield* [1902] P 42, CA (at common law, as against a wrongdoer, possession counts as title).

5 As to the sufficiency of a mere right of possession to ground a claim in conversion see PARA 575 post.

6 Cf note 4 supra. Possession of goods at the time of the wrong is merely one of two alternative qualifications to bringing a claim in conversion, and need not be shown where the claimant had an immediate right of possession at the time of the wrong: see PARA 559 ante.

7 See PARA 560 ante (immediate right of possession need not be accompanied by property in goods in order to ground a claim in conversion).

8 *Jeffries v Great Western Rly Co* (1856) 5 E & B 802 at 805 per Lord Campbell CJ; *Daniel v Rogers* [1918] 2 KB 228 at 234, CA, per Scrutton LJ; *Parker v British Airways Board* [1982] QB 1004 at 1010, [1982] 1 All ER 834 at 837-838, CA, per Donaldson LJ; cf *Thackwell v Barclays Bank plc* [1986] 1 All ER 676 at 689 per Hutchison J.

9 *Buckley v Gross* (1863) 3 B & S 566 at 572 per Cockburn CJ; and see *Parker v British Airways Board* [1982] QB 1004 at 1010, [1982] 1 All ER 834 at 837-838, CA, per Donaldson LJ. Cf *Buckley v Gross* supra at 573 per Crompton J.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/567. Title deeds.

### 567. Title deeds.

As a general rule, the owner of land has a right to possession of the title deeds, and is the proper claimant in a claim for their conversion or detention<sup>1</sup>.

1 *Lord v Wardle* (1837) 3 Bing NC 680; cf *Goodman v Boycott* (1862) 2 B & S 1. See MORTGAGE vol 77 (2010) PARAS 485-497; REAL PROPERTY vol 39(2) (Reissue) PARA 87; SALE OF LAND vol 42 (Reissue) PARA 131; SETTLEMENTS vol 42 (Reissue) PARA 771; TRUSTS vol 48 (2007 Reissue) PARA 729. As to the rights of co-owners see MORTGAGE vol 77 (2010) PARA 487; REAL PROPERTY vol 39(2) (Reissue) PARA 87. As to the custody of deeds when part of an estate is sold see SALE OF LAND vol 42 (Reissue) PARA 131. As to leases see LANDLORD AND TENANT. As to the creation of security over land by deposit of title deeds see LIEN vol 68 (2008) PARAS 811-812. There are some cases in which a person has a right to keep a document of title even where he has no right to the property to which the document relates: see *Rummens v Hare* (1876) 1 ExD 169, CA (gift of insurance policy). As to documents which a vendor of land is entitled to retain see SALE OF LAND vol 42 (Reissue) PARA 131.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/568. Co-owners, trustees, donees, finders and sheriffs.

#### 568. Co-owners, trustees, donees, finders and sheriffs.

One co-owner of property may sue another co-owner for conversion<sup>1</sup>.

Possession of goods by a beneficiary in accordance with the provisions of the trust instrument is in law the possession of the trustee, and the trustee can maintain a claim against a wrongdoer for the conversion of the goods<sup>2</sup>.

A donee of property may not sue for a conversion of it unless the gift has been perfected by the execution of a deed, or by delivery<sup>3</sup>.

The finder of lost goods has sufficient title in the goods to sue for conversion any person, except the true owner or any person against whom the finder trespassed in acquiring possession of the goods, who deprives him of the possession of them<sup>4</sup>.

A sheriff who has seized goods under an execution can maintain a claim for conversion against a person who wrongfully takes the goods away<sup>5</sup>.

1 See PARA 604 post.

2 *Barker v Furlong* [1891] 2 Ch 172. See further TRUSTS vol 48 (2007 Reissue) PARA 727. The beneficiary of a trust which confers a right of immediate possession on the beneficiary can sue a stranger to the trust in conversion without any necessity to join the trustee as party: *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA (where no immediate right of possession was established on the part of the beneficiary), explaining *Healey v Healey* [1915] 1 KB 938; *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 17, CA (contract of assignment of debts required the creditor to make over any cheques he received from the debtors to the assignees, and provided that on receipt the creditor should hold the cheques on trust for the assignees; creditor's manager paid into the creditor's account cheques received after the assignment, and was held to have committed a conversion for which the assignees could sue). See also *Maynegrain Pty Ltd v Compacafina Bank* (1984) 58 ALJR 389, PC (pledgee of barley, described in passing by Lord Templeman as an equitable pledge, held unable to maintain an action for its conversion

because the defendant had no reason to know of the pledgee's interest in the barley and the pledgee's agent had consented to the act complained of). See also PARA 559 ante.

3 See PARA 559 ante. See also GIFTS vol 52 (2009) PARAS 231-239. If a document of title to a chose in action which is assignable only by an instrument in writing is given and delivered by the owner of the chose in action to another person, the donee has the right to retain the document, and the person in whom the legal property in the chose in action is vested may not sue the donee in trover, even though the donee cannot recover the chose in action: see GIFTS vol 52 (2009) PARA 234. The receiver of a letter has a sufficient property in the paper on which the letter is written to enable him to sue in trover a person who wrongfully detains it (*Oliver v Oliver* (1861) 11 CBNS 139; *Thurston v Charles* (1905) 21 TLR 659; cf *Harold Stephen & Co Ltd v Post Office* [1978] 1 All ER 939, [1977] 1 WLR 1172, CA), although the copyright is in the writer (see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 71). Where an original document is photocopied using machinery and materials belonging to the owner of the document and then wrongfully detained, the owner of the original document may, irrespective of copyright, sue for conversion as the owner of the photocopy: *Secretary of State for Defence v Guardian Newspapers Ltd* [1984] Ch 156 at 164, [1984] 1 All ER 453 at 457, CA, per Donaldson MR, and at 166 and at 458-459 per Griffiths LJ; affd [1985] AC 339, [1984] 3 All ER 601, HL.

4 See PARA 559 ante. As to the finder who was no longer in possession of the chattel at the time of the wrong see PARA 567 ante.

5 See SHERIFFS vol 42 (Reissue) PARA 1135; CIVIL PROCEDURE. As against everyone but the execution creditor and the sheriff and his officers, the real owner is in possession until the time of the sale, and may sue a wrongdoer in trover: *Union Bank of London v Lenanton* (1878) 3 CPD 243, CA.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/569. Bailment.

### 569. Bailment.

A bailor or bailee may sue for conversion in the instances described below.

- 5 (1) In a bailment at will, either the bailor or the bailee may sue a third party who wrongfully takes the goods out of the bailee's possession<sup>1</sup>. The bailee qualifies as a proper claimant on the ground of his possession<sup>2</sup>, and the bailor qualifies as a proper claimant on the ground of his immediate right of possession<sup>3</sup>. The bailor at will can also sue the bailee if the bailee commits a conversion; and the bailor's immediate right of possession is sufficient for this purpose<sup>4</sup>.
- 6 (2) A bailee entitled to the possession of goods as against the bailor may sue a third party who commits an act of conversion<sup>5</sup>, and may even sue the bailor if he wrongfully deprives him of the goods<sup>6</sup>.
- 7 (3) If a bailee sells the goods, or otherwise deals with them in a manner fundamentally contrary to the bailment, the bailor may sue both the bailee and the purchaser<sup>7</sup>.

1 See BAILMENT vol 3(1) (2005 Reissue) PARAS 88-89. An action by one is a bar to an action by the other: see BAILMENT vol 3(1) (2005 Reissue) PARA 88.

2 See PARA 559 ante.

3 See *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA; and PARA 559 ante.

4 See PARA 559 text and note 9 ante.

5 See BAILMENT vol 3(1) (2005 Reissue) PARA 89. The bailor may not sue the third party in conversion, because he lacks both possession and the immediate right to possess, but can sue the third party for enduring damage to the bailor's reversionary interest: see PARA 631 post. If the bailee sues the third party wrongdoer in conversion, he must account to the bailor for what is recovered in excess of the bailee's interest: see BAILMENT vol 3(1) (2005 Reissue) PARAS 88, 90. If, before action, the bailor has transferred to the defendant the ownership of the goods, the bailee cannot recover more than the value of his own interest; and the defendant, relying upon such a transfer, is not setting up a *jus tertii* (see PARA 644 post), but, as donee or assignee of the *tertius*, his own right: *Eastern Construction Co Ltd v National Trust Co Ltd and Schmidt* [1914] AC 197, PC. See also *Webb v Ireland and A-G* [1988] IR 353.

6 See *Roberts v Wyatt* (1810) 2 Taunt 268; and BAILMENT vol 3(1) (2005 Reissue) PARA 89. As to the measure of damages see PARA 631 post.

7 See PARAS 605-607 post.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/570. Mortgagor in possession.

### **570. Mortgagor in possession.**

Where goods are mortgaged and the mortgagor is allowed to hold them up to the day fixed for payment, he is the proper claimant to sue for conversion, but if he sells the goods, the owner may sue him or, subject to qualifications, a purchaser from him<sup>1</sup>.

1 See MORTGAGE vol 77 (2010) PARA 395.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/571. Mortgagee in possession.

### **571. Mortgagee in possession.**

Where goods are mortgaged and are in the possession of the mortgagee, the mortgagor may not sue for conversion until he pays the mortgage debt; his remedy is to sue for redemption or to make a summary application for the delivery of the goods on terms of substituting for the security a sum of money equal to the amount secured with a proper margin<sup>1</sup>. In the case of a mortgage, a tender is not equivalent to payment, and the refusal of a tender does not deprive the mortgagee of his property in the goods<sup>2</sup>.

1 *Bank of New South Wales v O'Connor* (1889) 14 App Cas 273, PC. See also MORTGAGE VOL 77 (2010) PARA 101 et seq.

2 *Bank of New South Wales v O'Connor* (1889) 14 App Cas 273, PC; cf *Yungmann v Briesemann* (1892) 67 LT 642, CA (pledge), where it was held, at 643-644 per Lord Esher MR, that there had been no tender but that mere tender and refusal were in any case insufficient; the plaintiff must show himself ready and willing to pay, both at the time of tender and afterwards. As to claims between pledgors and pledgees see PARA 572 post.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/572. Pledge.

### **572. Pledge.**

Where goods are pledged by their owner or with his authority, the pledgee has the right to their possession, and, until the money for which the pledge is a security is tendered or paid, is the only person who may sue for conversion of the goods<sup>1</sup>. A claim by the pledgee to be the absolute owner of the goods pledged does not excuse the pledgor from the necessity of tendering the amount due, and does not vest in him the right to immediate possession of the goods without payment or tender of the amount due<sup>2</sup>. A re-pledge of the goods by the pledgee without the pledgor's consent does not determine the pledge and does not enable by itself the pledgor to sue<sup>3</sup>. If a pledgee refuses a tender of the sum due, he foregoes his special property in the goods, and the pledgor may then sue him if he can show that he was ready and willing to pay both at the time of tender and afterwards<sup>4</sup>. An unauthorised pledge of another's goods, by a person who is not himself a pledgee<sup>5</sup>, is a conversion against the person entitled to their immediate possession<sup>6</sup>; it may also be a conversion on the part of the unauthorised pledgee<sup>7</sup>. An unauthorised sale by a third party of pledged goods is a conversion, and at common law<sup>8</sup> the pledgee can recover damages calculated according to the full value of the goods; he is not limited to recovery of the amount secured<sup>9</sup>. The full value can be recovered by the pledgee not

only where he had possession of the goods at the time of the unauthorised sale but also where he had an immediate right to their possession unaccompanied by possession itself<sup>10</sup>.

1 *Martin v Reid* (1862) 11 CBNS 730. See also PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 23.

2 *Yungmann v Briesemann* (1892) 67 LT 642, CA. See also PARA 571 note 2 ante. There is an important difference in this respect between pledge and lien. Tender may be unnecessary in lien: see PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 23.

3 *Donald v Suckling* (1866) LR 1 QB 585 (explaining *Johnson (Assignee of Cumming) v Stear* (1863) 15 CBNS 330); *Halliday v Holgate* (1868) LR 3 Exch 299, Ex Ch; cf *Pigot v Cubley* (1864) 15 CBNS 701. See also PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 21. Where by an unlawful sale the pledgee professes to dispose of the reversionary interest and causes damage to the pledgor by making it difficult for him to redeem the goods, the pledgor may have some other remedy in damages: see PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 21.

4 *Yungmann v Briesemann* (1892) 67 LT 642, CA. See also PARA 571 note 2 ante; and *Pigot v Cubley* (1864) 15 CBNS 701.

5 As to re-pledge by an existing pledgee see the text and note 3 supra.

6 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA.

7 See the Torts (Interference with Goods) Act 1977 s 11(2); and PARA 555 ante.

8 The position may be different where the defendant invokes statutory rules for the establishment of a superior title in a person other than a claimant: see PARA 644 post.

9 See *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC; and PARA 615 et seq post.

10 *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/573. Rights of seller and buyer.

### **573. Rights of seller and buyer.**

Where goods are sold, the right to sue for their conversion is in the buyer or seller according to whichever of them has the possession or right of possession at their critical time<sup>1</sup>.

Where the property has passed to the buyer<sup>2</sup>, and he is entitled to delivery<sup>3</sup>, he may sue the seller or any third person who converts or detains the goods<sup>4</sup>. If goods are sold and the seller remains in possession of them as the agent for the buyer and, there being no default on the part of the buyer, the seller converts the goods, the buyer may sue the seller, as he has both the right of property and possession, which are necessary to maintain the claim<sup>5</sup>.

However, where the property has not passed, or where, although the property has passed, the seller retains possession of the goods with a lien for unpaid purchase money<sup>6</sup>, the seller is the only person who may sue<sup>7</sup>.

1 *Bloxam v Sanders* (1825) 4 B & C 941; *Langton v Higgins* (1859) 4 H & N 402. See also *Jarvis v Williams* [1955] 1 All ER 108, [1955] 1 WLR 71, CA. As to the necessity for right of possession see PARA 559 ante.

2 See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 109 et seq.

3 A buyer may fail to show his right to delivery if he is unable to produce bills of lading: *Trucks and Spares Ltd v Maritime Agencies (Southampton) Ltd* [1951] 2 All ER 982, CA. See also SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 367-368.

4 See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 306.

5 *Chinery v Viall* (1860) 5 H & N 288. As to the measure of damages in such a case see PARA 632 post. The liability of a seller of goods for conversion, for wrongfully retaking or diverting the goods from a buyer to whom property has already passed, does not preclude an alternative liability against the seller for breach of the warranty of quiet possession under the Sale of Goods Act 1979 s 12(2)(b) (as amended) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 69), at least where the act of conversion occurred during the subsistence of the relationship of seller and buyer: *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA.

6 As to seller's lien, stoppage in transitu and the seller's right to withhold delivery see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 242 et seq, 256 et seq, 279-280.

7 *Lord v Price* (1874) LR 9 Exch 54.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 573 Rights of seller and buyer

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(c) Who may Sue/574. Special conditions between seller and buyer.

### 574. Special conditions between seller and buyer.

Where there is a contract for the delivery of goods on compliance by the buyer with of a condition and there is delivery of part of the goods but the condition is broken, the delivery is only conditional and the seller is entitled to stop further delivery and sue for a conversion of the goods already delivered<sup>1</sup>. Similarly, where a seller sells goods to be paid for on delivery and by mistake delivers the goods without receiving payment, the seller may, after demand and refusal to return the goods or pay, sue the buyer<sup>2</sup>.

If the goods sold are to be paid for by instalments, the balance to be paid before removal, and the seller allows the buyer to place the goods on the buyer's premises under lock and key, but the seller retains the key of the external inclosure, and the balance is unpaid, the buyer has not such a possession as will enable him to sue the seller on a wrongful removal and sale of the goods<sup>3</sup>.

1 *Bishop v Shillito* (1819) 2 B & Ald 329n, explained in *Re Middleton, ex p Middleton* (1864) 3 De GJ & Sm 201. See also SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 138.

2 *Bishop v Shillito* (1819) 2 B & Ald 329n per Bayley J.

3 *Milgate v Kebble* (1841) 3 Man & G 100.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(d) Loss of Right of Possession through Unauthorised Transaction/575-600. Circumstances in which right to possession may be lost.

*(d) Loss of Right of Possession through Unauthorised Transaction*

**UPDATE**

**542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

**575-600. Circumstances in which right to possession may be lost.**

In certain circumstances, a person having an immediate right to the possession of goods may cease to enjoy that right by reason of some unauthorised transaction affecting the goods. This may occur where an owner of goods is deprived of possession by theft, and some third person later acquires the stolen goods in circumstances which give him a good title under one of the statutory exceptions<sup>1</sup> to the general principle *nemo dat quod non habet*<sup>2</sup>. In such an event, the original owner's title is correspondingly extinguished and he ceases to have that right of possession which is necessary to sustain a claim in conversion against the good faith acquirer<sup>3</sup>. An owner's title may alternatively be extinguished where goods which are stolen from him are taken overseas and disposed of to a bona fide acquirer while situated in a country whose system of law recognises the transaction as conferring title on the acquirer<sup>4</sup>. In general the new title recognised by the law of the country where the goods were located at the time of the disposition will also be recognised in England under principles of the conflict of laws<sup>5</sup>. The new title will displace the former title and deprive the original owner of that immediate right of possession<sup>6</sup> which he would need in order to sue the acquirer<sup>7</sup> in conversion<sup>8</sup>.

1 As to the exceptions see eg the Sale of Goods Act 1979 ss 21-25 (as amended); the Factors Act 1889 s 2; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 150 et seq.

2 The rule '*nemo dat quod non habet*' (ie no one can give that which he does not have) dictates that no one can give a better title than he has. Where goods are sold by a person who is not the owner and who does not sell under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is precluded by his conduct from denying the authority of the

seller to sell: see the Sale of Goods Act 1979 s 21(1); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 150.

3 See PARA 555 ante. As to the immediate right of possession as a qualification to sue in conversion see PARA 559 ante.

4 See CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 405-406. As to the recovery or return of certain cultural objects which are unlawfully removed from one country to another see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1094 et seq.

5 See CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 405-406. Where an English court is required to determine the validity and effect of a disposition of goods which are situated in an overseas country at the time of the disposition, the normal principle to be applied is that the disposition is governed by the *lex situs*, the law of the country where the goods are located at that time: see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 405. For exceptions to the *lex situs* rule see *Winkworth v Christie, Manson & Woods Ltd* [1980] Ch 496 at 501, [1980] 1 All ER 1121 at 1125 per Slade J.

6 As to the immediate right of possession as a qualification to sue in conversion see PARAS 559 ante.

7 Although the original owner cannot maintain a claim against the acquirer in conversion, he may still be able to sue the thief.

8 See *Winkworth v Christie, Manson & Woods Ltd* [1980] Ch 496, [1980] 1 All ER 1121; and CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 405-406.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/601. Persons liable in general.

### *(e) Who may be Sued*

#### **601. Persons liable in general.**

To make a person liable for conversion it must be proved that the act of conversion was committed by him or by a person for whose act he is responsible<sup>1</sup>. In appropriate circumstances, an employee or agent may be sued whether or not he has authority from the employer or principal for his act<sup>2</sup>. A bailee or other person who is entrusted with the safekeeping of goods is liable for a conversion of the goods committed by an employee, agent or independent contractor to whom he has delegated any part of his duty of care<sup>3</sup>, whether he has authorised the conversion or not<sup>4</sup>.

The immunity of a foreign state from the jurisdiction of United Kingdom courts does not extend to proceedings in respect of damage or loss of tangible property caused by an act or omission in the United Kingdom<sup>5</sup>.

1 *Pothonier v Dawson* (1816) Holt NP 383, where the evidence of conversion was the refusal to deliver by the defendant's general agent and in order to make the defendant liable it was held necessary to prove that the agent acted under a special direction; *Everest v Wood* (1824) 1 C & P 75; *Glover v London and North Western Rly Co* (1850) 5 Exch 66; *Hilbery v Hatton* (1864) 2 H & C 822, where it was held that if a principal ratifies the purchase by his agent of a chattel which the vendor had no right to sell, the principal is guilty of conversion, even if, when he ratified, he had no knowledge that the sale was unlawful; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA, where the seller, collaborating in the implementation of a decision to divert the goods from the buyer to whom property and the right of immediate possession had passed, was held to have committed conversion. See also TORT vol 97 (2010) PARA 601 et seq; and AGENCY vol 1 (2008) PARAS 59, 69, 150 et seq. An execution creditor is not liable for a wrongful seizure and sale by the sheriff, unless the creditor personally intermeddled in the execution: see CIVIL PROCEDURE. As to actions against a corporation for conversion see CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1275-1279.

2 See TORT vol 97 (2010) PARA 715 et seq; and AGENCY vol 1 (2008) PARAS 164-165; BAILMENT vol 3(1) (2005 Reissue) PARA 13. See *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 17, CA, where a company director who converted a cheque was as the primary tortfeasor. See also *Fairline Shipping Corp v Adamson* [1975] QB 180, [1974] 2 All ER 967. An employee who has received goods from his employer is not liable for conversion merely because he refuses to deliver them up without an order from his employer: *Alexander v Southey* (1821) 5 B & Ald 247.

3 *Morris v CW Martin & Sons Ltd* [1966] 1 QB 716, [1965] 2 All ER 725, CA. As to vicarious responsibility see generally *British Road Services Ltd v Arthur V Crutchley & Co Ltd (Factory Guards Ltd, third parties)* [1968] 1 All ER 811, CA; *Port Swettenham Authority v TW Wu & Co (M) Sdn Bhd* [1979] AC 580, [1978] 3 All ER 337, PC; *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827, [1980] 1 All ER 556, HL; *Nahhas v Pier House (Cheyne Walk) Management Ltd* (1984) 270 Estates Gazette 147.

4 *Morris v CW Martin & Sons Ltd* [1966] 1 QB 716, [1965] 2 All ER 725, CA.

5 See the State Immunity Act 1978 ss 1, 5; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 244, 249. See *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/602. Joint tortfeasors.

### 602. Joint tortfeasors.

If two or more persons act together in doing what amounts to a conversion, they may be jointly sued. Thus, where the true owner demanded the goods from B, with whom they had been deposited by A, and B, in the presence of A, refused to deliver them, it was held that there was evidence of joint conversion<sup>1</sup>.

1 *Lee v Bayes and Robinson* (1856) 18 CB 599. See also *Bloxholm v Oldham* (1750), cited in 1 Burr at 22, where the verdict was against the sheriff, execution creditor and buyer; cf *Nicoll v Glennie* (1813) 1 M & S 588, where assignees in bankruptcy refused to deliver goods to the true owner and it was held that there was no evidence of joint conversion by the bankrupt and the assignees; *Atkin v Slater* (1844) 1 Car & Kir 356, where a written demand was made on three defendants at different times and in different places and it was held to be a question of fact whether their conduct previous to their separate refusals amounted to a joint conversion. As to the effect of judgment against one of a number of joint tortfeasors see TORT vol 97 (2010) PARA 449.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/603. Minors.

### **603. Minors.**

A minor who parts with goods bailed to him, in circumstances which he cannot show to be within the purview of the contract of bailment, is liable in conversion if he fails to return them on demand<sup>1</sup>.

If a minor, by means of a fraudulent misrepresentation that he is of age, induces the sale and delivery to him of goods which are not necessaries, he is not liable to be sued for conversion as the vendor intended the property in his goods to pass, but there is an equitable remedy against him to compel him to restore the goods if they are in his possession<sup>2</sup>. The court also has a statutory discretion to order the transfer of any property acquired by a minor, or any property representing it, under a contract that is unenforceable against him or repudiated by him<sup>3</sup>.

1 See *Ballett v Mingay* [1943] 1 KB 281, [1943] 1 All ER 143, CA. As to the liability of minors for torts and as to torts founded on contract see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 26-27.

2 *Stocks v Wilson* [1913] 2 KB 235. See also CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 26-28. It is doubtful whether there is an equitable remedy against him to compel him to pay over any money which he has obtained for the goods: *R Leslie Ltd v Sheill* [1914] 3 KB 607 at 618, 619, CA, per Lord Sumner.

3 See the Minors' Contracts Act 1987 s 3(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 15, 24.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/604. Conversion by a co-owner.

### **604. Conversion by a co-owner.**

Co-ownership does not afford a defence to proceedings for conversion where the defendant, without the authority of the other co-owner, destroys the goods, or disposes of them in a way giving a good title to the entire property in the goods, or otherwise does anything equivalent to the destruction of the other's interest in the goods<sup>1</sup>. This principle was well established at common law<sup>2</sup>, and the statutory rule is declared to be by way of restatement of existing law<sup>3</sup>. Thus a partner who pays cheques into a third person's bank account is, by excluding his co-owner's right to enjoy the proceeds, guilty of conversion<sup>4</sup>. However, a co-owner may not be sued for conversion if he merely makes use of the common property in a reasonable way<sup>5</sup>. Nor is there necessarily a conversion where the co-owner takes or keeps the goods<sup>6</sup>.

By statute co-ownership is also no defence to an action founded on conversion where the defendant, without the authority of the other co-owner, purports to dispose of goods in such a way as would give a good title to the entire property in the goods if he were acting with the authority of all co-owners of the goods<sup>7</sup>. This provision alters the rule at common law by which a sale and delivery by a co-owner which did not pass title was not a conversion because it was not akin to destruction of the plaintiff's property<sup>8</sup>. However, it would seem to be inapplicable where the disposition by the co-owner falls short of a purported disposal of the entire interest in the goods, for example by an unauthorised and ineffective pledge<sup>9</sup>.

These statutory rules do not affect the law concerning the execution or enforcement of judgments, or concerning any form of distress<sup>10</sup>.

1 Torts (Interference with Goods) Act 1977 s 10(1)(a). See also *Adventure Film Productions SA v Tully* (1982) Times, 14 October, where the defendants conceded that their alleged co-ownership of film material with the plaintiffs would not of itself, even if established, preclude the making of an order against them under the Torts (Interference with Goods) Act 1977 s 4 (as amended) (see PARA 654 post).

2 See *Barnardiston v Chapman and Smith* (1715) cited in 4 East at 121; *Fennings v Lord Grenville* (1808) 1 Taunt 241; *May v Harvey* (1811) 13 East 197; *Morgan v Marquis* (1853) 9 Exch 145; *Jacobs v Seward* (1872) LR 5 HL 464; *Baker v Barclays Bank Ltd* [1955] 2 All ER 571, [1955] 1 WLR 822. See also *Coleman v Harvey* [1989] 1 NZLR 723, NZ CA; *Re Gillie, ex p Cornell* (1996) 70 FCR 254, Aust Fed Ct. As to trespass by one co-owner see PARA 664 post; as to co-ownership of property see PERSONAL PROPERTY vol 35 (Reissue) PARAS 1243-1248; REAL PROPERTY vol 39(2) (Reissue) PARA 189 et seq; and as to possession by co-owners see PERSONAL PROPERTY vol 35 (Reissue) PARA 1217.

3 Torts (Interference with Goods) Act 1977 s 10(3).

4 *Baker v Barclays Bank Ltd* [1955] 2 All ER 571, [1955] 1 WLR 822.

5 Eg by cutting grass and making hay in the common field (*Jacobs v Seward* (1872) LR 5 HL 464), or extracting the oil and the other valuable parts of a dead whale which is owned in common (*Fennings v Lord Grenville* (1808) 1 Taunt 241). A grant of arms is a document in which every member of the family has an interest; whichever member of the family has possession of it is entitled to keep it, but may be called upon by the other members to produce it; trover will not lie against anyone interested in it: *Stubs v Stubs* (1862) 1 H & C 257. As to trover and the technical meaning acquired by conversion as a distinct form of that action see PARA 542 ante.

6 Co Litt 200a; *Holliday v Camsell and White* (1787) 1 Term Rep 658; *Jones v Brown* (1856) 25 LJ Ex 345. The bailee of common property from one co-owner is not guilty of conversion if he refuses to deliver the property on the demand of another co-owner (*Atwood v Ernest* (1853) 13 CB 881; *Harper v Godsell* (1870) LR 5 QB 422), unless the other co-owner has a special property in the entire chattel (*Nyberg v Handelaar* [1892] 2 QB 202, CA). Where a bailee has received the common property from one co-owner, with the authority of another, to keep the property on their joint account, a joint demand is necessary (*Nathan v Buckland* (1818) 2 Moore CP 153); but where he receives it from one, on account of that one only, a demand by that one is sufficient (*May v Harvey* (1811) 13 East 197). Two co-owners, having made a joint demand, may bring separate actions: *Bleadon v Hancock* (1829) 4 C & P 152; cf *Catlin v Cyprus Finance Corpn (London) Ltd* [1983] QB 759, [1983] 1 All ER 809 (bank owing several obligations to joint account holders, not to release funds to one holder without consent of the other).

7 Torts (Interference with Goods) Act 1977 s 10(1)(b).

8 See *Heath v Hubbard* (1803) 4 East 110; *Farrar v Beswick* (1836) 1 M & W 682 at 688; *Mayhew v Herrick* (1849) 7 CB 229; *Morgan v Marquis* (1853) 9 Exch 145; but see *Fraser v Kershaw* (1856) 2 K & J 496. See also (1952) 68 LQR 507. The co-owner who sells the property is liable to account in equity: see REAL PROPERTY vol 39(2) (Reissue) PARA 196.

9 Cf *Nyberg v Handelaar* [1892] 2 QB 202, CA.

10 Torts (Interference with Goods) Act 1977 s 10(2). The rules equally apply to trespass to goods as they apply to conversion: see PARA 664 post.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/605. Conversion by bailees.

### **605. Conversion by bailees.**

A bailee of goods for hire who acts in a manner repugnant to the agreement under which the goods are held, determines the bailment, and an action for conversion lies against him<sup>1</sup>, or a purchaser or pledgee from him, or an auctioneer who detains or sells the goods on his instructions<sup>2</sup>. If by agreement a bailee has the custody of goods for a specific purpose and uses them for purposes in contravention of the agreement, the bailment is determined and the bailee may be sued for conversion<sup>3</sup>. If a bailee for safe custody wrongfully deals with the goods, as by selling and delivering them, an action lies against him, and may be brought immediately upon the conversion; the bailor may also demand the redelivery of the goods, and may sue the bailee in conversion for breach of his duty to deliver upon request<sup>4</sup>. If goods are mortgaged and it is agreed that the mortgagor should hold them up to the day fixed for payment of the mortgage debt and the mortgagor before that date sells the goods, the sale determines the bailment and the mortgagor may be sued<sup>5</sup>.

If a person who has a lien on goods wrongfully disposes of them, he loses his lien and may be sued for conversion<sup>6</sup>; but a pledgee or mortgagee in lawful possession of goods by virtue of the pledge or mortgage is not liable for assigning his interest in them or repledging them during the currency of the pledge or mortgage<sup>7</sup>.

1 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA, obiter per Mummery LJ (proposition accepted as common ground by parties).

2 See AUCTION vol 2(3) (Reissue) PARA 226; BAILMENT vol 3(1) (2005 Reissue) PARA 19. See eg *Union Transport Finance Ltd v British Car Auctions Ltd* [1978] 2 All ER 385, CA; *R H Willis & Son (a firm) v British Car Auctions Ltd* [1978] 2 All ER 392, [1978] 1 WLR 438, CA. As to the conversion of goods let under hire purchase agreements see CONSUMER CREDIT vol 9(1) (Reissue) PARA 37. The sending of the goods to an auctioneer to be sold may be conversion: *Loeschman v Machin* (1818) 2 Stark 311. As to the liability of a minor who as bailee has parted with the goods see PARA 603 ante. As to conversion by a pledgee see PARA 572 ante; and PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 21. As to cases where a purchaser or pledgee from a mercantile agent has a good title see AGENCY vol 1 (2008) PARA 148.

3 See BAILMENT vol 3(1) (2005 Reissue) PARAS 18-19; CONSUMER CREDIT vol 9(1) (Reissue) PARA 37.

4 *Wilkinson v Verity* (1871) LR 6 CP 206. As to the effect of lapse of time see PARA 652 post.

5 *Fenn v Bittleston* (1851) 7 Exch 152, where the action was against the assignees in bankruptcy of the mortgagor for a sale by them. See also MORTGAGE vol 77 (2010) PARA 395.

6 *Scott v Newington* (1833) 1 Mood & R 252; *Mulliner v Florence* (1878) 3 QBD 484, CA: see LIEN vol 68 (2008) PARA 852.

7 As to pledge see PARA 572 ante; and PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARAS 22, 24. The pledgee remains liable for the safe custody and redelivery of the goods see PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 24. As to the assignment of a lien see LIEN vol 68 (2008) PARA 820.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/606. Involuntary bailees.

### 606. Involuntary bailees.

An involuntary bailee<sup>1</sup>, who is in possession of another's goods knowingly but without having consented to possession<sup>2</sup>, is not a true bailee<sup>3</sup> and does not owe any general duty of care<sup>4</sup> to safeguard the goods from harm<sup>5</sup>. He cannot accordingly be liable for that statutory form of conversion<sup>6</sup> which arises where a bailee, in breach of his duty to his bailor, allows the bailor's goods to be lost or destroyed<sup>7</sup>. The involuntary bailee may, however, be liable for one of the common law forms of conversion<sup>8</sup> where he deliberately, and knowing the goods not to be his, consumes, detains, destroys, disposes of or otherwise deals in the goods<sup>9</sup> contrary to the owner's right<sup>10</sup>. The involuntary bailee is also liable in conversion where he misdelivers the goods to someone other than the person entitled to them, with the honest intention of effecting the return of the goods to that person, and the person entitled is deprived of the goods in consequence<sup>11</sup>; but liability in this event depends on the involuntary bailee's having failed to take reasonable care in making the unauthorised delivery<sup>12</sup>, and is not strict liability<sup>13</sup>.

1 As to involuntary bailment see BAILMENT vol 3(1) (2005 Reissue) PARA 10.

2 The possessor's consent to possession is essential to bailment: see BAILMENT vol 3(1) (2005 Reissue) PARA 10.

3 Cf the unwitting bailee: see PARA 607 post.

4 *Lethbridge v Phillips* (1819) 2 Stark 544; *Howard v Harris* (1884) 1 Cab & El 253; *Neuwith v Over Darwen Industrial Co-Operative Society* (1894) 63 LJQB 290; and see *Palmer Bailment* (2nd Edn, 1991) Ch 12.

5 He is answerable if he deliberately (and perhaps if he recklessly) harms the goods: see the authorities cited in note 4 supra.

6 In the Torts (Interference with Goods) Act 1977 s 2(2): see PARA 548 ante. As to the concomitant abolition of the tort of detinue see PARA 542 ante.

7 This form of liability is not attracted because there is no bailment and therefore no bailor: the involuntary possessor is not a bailee; and the involuntary possessor generally owes no duty in respect of the goods.

8 As to the common law forms of conversion see generally PARA 548 ante.

9 See the authorities cited in note 4 supra.

10 As to the types of interest in goods which qualify a claimant to sue in conversion see PARA 559 et seq ante.

11 *Elvin Powell Ltd v Plummer Roddis Ltd* (1933) 50 TLR 158; *Batistoni v Dance* (1908) Times, 18 January. See also *Palmer Bailment* (2nd Edn, 1991) pp 689-697.

12 *Elvin Powell Ltd v Plummer Roddis Ltd* (1933) 50 TLR 158.

13 This principle stands in contrast to liability in conversion generally, where liability is strict in the case of misdelivery by a conventional bailee. See PARA 569 ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/607. Unwitting bailees.

### 607. Unwitting bailees.

An unwitting bailee<sup>1</sup>, who is unaware of his possession of the goods of another<sup>2</sup>, is not a true bailee<sup>3</sup> and does not owe any general duty of care to safeguard the goods from harm<sup>4</sup>. He cannot accordingly be liable for that statutory form of conversion<sup>5</sup> which arises where a bailee, in breach of his duty to his bailor, allows the bailor's goods to be lost or destroyed<sup>6</sup>. A similar immunity attaches to a person who is aware of the fact that he is in possession of goods but believes that he is the owner of those goods<sup>7</sup>. The unwitting bailee will, however, be liable to the person entitled to the goods where he deliberately destroys or otherwise disposes of them without exercising reasonable care to verify that they are his property, and the person entitled to the goods<sup>8</sup> is deprived of them in consequence<sup>9</sup>. This liability appears to be a liability in the general tort of negligence<sup>10</sup> and not in conversion<sup>11</sup>.

1 As to unwitting bailees see generally BAILMENT vol 3(1) (2005 Reissue) PARA 10; Palmer *Bailment* (2nd Edn, 1991) Ch 6. Occasionally the phrases unconscious bailee, or undisclosed bailment, are used to connote the same relationship: see *AVX Ltd v EGM Solders Ltd* (1982) Times, 7 July.

2 Such a person does not consent to possession, and such consent on the part of the possessor is essential to bailment: see BAILMENT vol 3(1) (2005 Reissue) PARA 10.

3 Cf the involuntary bailee: see PARA 606 ante.

4 See *AVX Ltd v EGM Solders Ltd* (1982) Times, 7 July. See also Palmer *Bailment* (2nd Edn, 1991) Ch 6. However, before dealing with the goods, the unwitting bailee is under a duty to use a sufficient standard of care in the circumstances of the case to ascertain that the goods are his own: *AVX Ltd v EGM Solders Ltd* supra.

5 See the Torts (Interference with Goods) Act 1977 s 2(2); and PARA 548 ante. As to the concomitant abolition of the tort of detinue see PARA 542 ante.

6 The reasons for this immunity are the same, mutatis mutandis, as those applicable to the involuntary bailee: see PARA 606 note 7 ante.

7 See *AVX Ltd v EGM Solders Ltd* (1982) Times, 7 July.

8 Title to sue appears to depend on the claimant's having an immediate right to possession of the goods: cf *Leigh and Sullivan Ltd v Aliakmon Shipping Co Ltd*, *The Aliakmon* [1986] AC 785, [1986] 2 All ER 145, HL; and see generally PARA 550 et seq ante.

9 *AVX Ltd v EGM Solders Ltd* (1982) Times, 7 July.

10 See generally NEGLIGENCE.

11 Cf *AVX Ltd v EGM Solders Ltd* (1982) Times, 7 July, per Staughton J; and see TORT vol 97 (2010) PARA 495 et seq.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/608. Receivers.

### 608. Receivers.

A receiver who refuses to surrender goods to a person having the immediate right to their possession, or who disposes of goods without the authority of the person entitled, may be liable in conversion<sup>1</sup>. Such liability may arise where the claimant originally supplied the goods under a contract containing an effective title retention clause<sup>2</sup> and the relevant debt remains unpaid<sup>3</sup>. Where, however, a dispute exists as to the effectiveness of a title retention clause and the buyer's receiver, pending resolution of the dispute, personally undertakes to pay the seller their value, the court will not normally grant the seller an injunction ordering the buyer to refrain from reselling the goods and to return them to the seller<sup>4</sup>, but will regard the undertaking as a sufficient protection for the seller's interests, and will consider damages to be an adequate remedy for any wrongful sale<sup>5</sup>.

1 *Clough Mill Ltd v Martin* [1984] 3 All ER 982, [1985] 1 WLR 111, CA; but note the Insolvency Act 1986 s 11; and see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 157.

2 *Clough Mill Ltd v Martin* [1984] 3 All ER 982, [1985] 1 WLR 111, CA; *Armour v Thyssen Edelstahlwerke AG* [1991] 2 AC 339, [1990] 3 All ER 481, HL.

3 Cf *Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* [1984] 2 All ER 152, [1984] 1 WLR 485; *Stroud Architectural Systems Ltd v John Laing Construction Ltd* [1994] 2 BCLC 276, (1993) 35 ConLR 135. The claimant will have no immediate right to possession, and thus no right to sue in conversion, where he purported to reserve to himself mere equitable or beneficial title and not legal title (*Re Bond Worth Ltd* [1980] Ch 228, [1979] 3 All ER 919; but cf *Abbey National Building Society v Cann* [1991] 1 AC 56, [1990] 1 All ER 1085, HL; *Soglease Aust Ltd v Boston Ltd* (1990) 26 NSWLR 1) or where the relevant term of the supply contract purporting to activate his right to recover possession of the goods is not in the circumstances applicable (*Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* supra; *Stroud Architectural Systems Ltd v John Laing Construction Ltd* supra) or where the goods supplied have been consumed or lost their identity (*Borden (UK) Ltd v Scottish Timber Products Ltd* [1981] Ch 25, [1979] 3 All ER 961, CA; *Re Peachdard Ltd* [1984] Ch 131, [1983] 3 All ER 204; but cf *Clough Mill Ltd v Martin* [1984] 3 All ER 982 at 987, [1985] 1 WLR 111 at 116, CA, per Goff LJ) or where the person to whom the goods are supplied disposes of them, before the revival of the supplier's right of possession, to a third person under a transaction which passes property to that third person by way of exception to the general principle *nemo dat quod non habet* (*Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* supra; *Four Point Garage Ltd v Carter* [1985] 3 All ER 12; *Archivent Sales and Development Ltd v Strathclyde Regional Council* (1984) 27 BLR 98; and see generally SALE OF GOODS AND SUPPLY OF SERVICES) or where the goods become fixtures (cf *Re Yorkshire Joinery Co* (1967) 111 Sol Jo 701).

4 As to the normal forms of relief in actions for wrongful interference with goods see PARAS 612-614 post.

5 *Lipe Ltd v Leyland DAF Ltd* [1994] 1 BCLC 84, [1993] BCC 385, CA.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/609. Police.

#### 609. Police.

The police<sup>1</sup> can, in appropriate circumstances, be bailees of the personal property of others<sup>2</sup>, and may in limited cases owe a duty to take reasonable care of that property<sup>3</sup>. It follows that the police can in principle be liable for that statutory form of conversion<sup>4</sup> which arises when a bailee, in breach of his duty to his bailor<sup>5</sup> allows the bailor's goods to be lost or destroyed<sup>6</sup>. In principle, the police can also be liable for any of the common law forms of conversion<sup>7</sup> if, without either the authority of the person entitled, or some statutory entitlement<sup>8</sup>, they wrongfully remove, or detain<sup>9</sup>, or dispose of goods over which some other person has either possession, or an immediate right to possession<sup>10</sup>, at the time of the act in question<sup>11</sup>.

1 See generally POLICE.

2 *Sutcliffe v Chief Constable of West Yorkshire* [1996] RTR 86, CA (where a duty of care was in principle conceded); *Goldie-Scot v Chief Constable of Kent* (1995) Lexis, Enggen Library, Cases File, CA, and decisions cited therein. Cf *Mazullah Khan v McNamara* (1911) 13 WALR 151 (police liable as bailees of stray camels taken into custody). Cf also the cases involving individual police officers as finders (and possibly bailees) of chattels: eg *Byrne v Hoare* [1965] Qd R 135; *Crinion v Minister for Justice* [1959] Ir Jur 15.

3 *Sutcliffe v Chief Constable of West Yorkshire* [1996] RTR 86, CA; *Goldie-Scot v Chief Constable of Kent* (1995) Lexis, Enggen Library, Cases File, CA, and decisions cited therein. A duty of care may not arise on the part of the police where its imposition would offend the general rule of public policy that claims in negligence do not lie against the police so far as concerns their function in the investigation and suppression of crime: see generally *Hill v Chief Constable of Yorkshire* [1989] 1 AC 53, [1988] 2 All ER 238, HL. For recognition of the application of this principle to cases of alleged bailment on the part of the police see *Goldie-Scot v Chief Constable of Kent* *supra*; *Laing Henry Ltd v Kent Constabulary* (1993) Lexis, Enggen Library, Cases File, per Judge Simpson; *Lervold v Chief Constable of Kent* (1994) Lexis, Enggen Library, Cases File, CA.

4 See the Torts (Interference with Goods) Act 1977 s 2(2); and PARA 548 ante.

5 See generally BAILMENT.

6 Such liability formerly sounded in detinue: see *Reeve v Palmer* (1858) 5 CBNS 84; *Houghland v RR Low (Luxury Coaches) Ltd* [1962] 1 QB 694, [1962] 2 All ER 159, CA. As to the abolition of the tort of detinue see PARA 542 ante.

7 As to the common law forms of conversion see generally PARA 542 ante.

8 See POLICE vol 36(1) (2007 Reissue) PARA 520 et seq.

9 See eg *Davis v Hampshire Police Authority* [1978] CLY 3024; cf *Roandale Ltd v Metropolitan Police Comr* [1979] Crim LR 254, CA.

10 As to these qualifications to sue in conversion see *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA; and PARA 559 et seq ante.

11 As to the statutory machinery for the disposal of personal property which has come into the possession of the police by reason of their professional activities see the Police (Property) Act 1897; PARA 565 ante; and POLICE vol 36(1) (2007 Reissue) PARAS 520-521. See also *Davis v Hampshire Police Authority* [1978] CLY 3024.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/610. Local authorities.

#### 610. Local authorities.

Local authorities<sup>1</sup> can, in principle, be bailees of the personal property of others<sup>2</sup>, and will in appropriate circumstances owe a duty of reasonable care<sup>3</sup>. In such circumstances they can accordingly be liable for that statutory form of conversion<sup>4</sup> which arises when a bailee, in breach of his duty to his bailor<sup>5</sup>, allows the bailor's goods to be lost or destroyed<sup>6</sup>. Local authorities can also be liable for any of the common law forms of conversion<sup>7</sup> if, without the consent of the person entitled, or some statutory authority<sup>8</sup>, or some right subsisting at common law<sup>9</sup>, they wrongfully remove, or detain, or dispose of<sup>10</sup> goods over which some other person has either possession, or an immediate right to possession<sup>11</sup>, at the time of the relevant act.

1 As to local authorities see TORT vol 97 (2010) PARAS 423, 502; and LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

2 *Barrett v Enfield London Borough Council* [1998] QB 367 at 378, [1997] 3 All ER 171 at 179, CA, obiter per Lord Woolf MR (semble: social workers can be bailees and local authority employers can in principle be vicariously liable for breach of obligations thus arising); and see *W v Essex County Council* [1999] Fam 90, [1998] 3 All ER 111, CA.

3 See the cases cited in note 2 supra. See also *Kalitsi v Hammersmith London Borough Council* (1980) Lexis, Enggen Library, Cases File, CA; cf *Mitchell v Ealing London Borough Council* [1979] QB 1, [1978] 2 All ER 779 (local authority housing department became gratuitous bailee of squatter's personal property and made appointment to hand over goods; officers failed to deliver up to squatter at agreed time and property subsequently found to have been stolen; local authority liable for loss). See generally BAILMENT. Public policy may prohibit the imposition of a duty of care on a local authority in specific instances: see *X (minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Stovin v Wise (Norfolk County Council, third party)* [1996] AC 923, [1996] 3 All ER 801, HL; *Barrett v Enfield London Borough Council* [1998] QB 367, [1997] 3 All ER 171, CA; *W v Essex County Council* [1999] Fam 90, [1998] 3 All ER 111, CA. See also ADMINISTRATIVE LAW.

4 See the Torts (Interference with Goods) Act 1977 s 2(2); and PARA 548 ante.

5 Such liability formerly sounded in detinue: see *Reeve v Palmer* (1858) 5 CBN 84; *Houghland v RR Low (Luxury Coaches) Ltd* [1962] 1 QB 694, [1962] 2 All ER 159, CA. As to the abolition of detinue see PARA 542 ante.

- 6 See the Torts (Interference with Goods) Act 1977 s 2(2); and PARA 548 ante.
- 7 As to the common law forms of conversion see generally PARA 542 ante.
- 8 See eg the Torts (Interference with Goods) Act 1977 ss 12, 13 (as amended), Sch 1 (disposal of uncollected goods); and BAILMENT.
- 9 Eg that conferred by the doctrine of agency of necessity: see generally AGENCY vol 1 (2008) PARA 24. See also *Georgiou v Acme Housing Association Ltd* (1995) unreported, Central London County Court (housing association disposed of obstructive and inflammable material left by artist tenant in public parts of multi-tenanted building; housing association held not liable for disposal).
- 10 Cf *Georgiou v Acme Housing Association Ltd* (1995) unreported, Central London County Court.
- 11 As to these qualifications to sue in conversion see *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA; and PARA 559 et seq ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(e) Who may be Sued/611. Hospital authorities, education authorities, etc.

### 611. Hospital authorities, education authorities, etc.

Principles similar to those governing local authorities<sup>1</sup> apply to hospital authorities<sup>2</sup>, education authorities<sup>3</sup> and other public authorities which possess or deal in the personal property of others.

- 1 See PARA 610 ante.
- 2 See eg *Martin v London County Council* [1947] KB 628, [1947] 1 All ER 783; *Southland Hospital Board v Perkins Estate* [1986] 1 NZLR 373; cf *Dobson v North Tyneside Health Authority and Newcastle Health Authority* [1996] 4 All ER 474, [1997] 1 WLR 596, CA (claim for alleged bailment of brain failed). As to bailment of human tissue see PARA 547 ante.
- 3 See eg *Scriven v Middlesex County Council* (1950) 100 LJ 360.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(f) Remedies/612. Retaking of goods.

*(f) Remedies*

**612. Retaking of goods.**

If goods have been wrongfully taken out of the possession of the owner, he may lawfully retake them, and is justified in the use of reasonable force against a person who resists him<sup>1</sup>.

1 See PARA 670 post.

**UPDATE**

**542-686 Wrongful Interference with Goods**

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(f) Remedies/613. Proceedings for recovery.

**613. Proceedings for recovery.**

The owner of goods may sue the taker or any person who has possession of them<sup>1</sup>, in conversion<sup>2</sup>, for an order for delivery of the goods and, alternatively or in addition, for damages<sup>3</sup>; or, where the goods have been sold, he may waive the tort and sue on an implied contract for money had and received<sup>4</sup>.

1 As to who may be sued see PARA 601 et seq ante.

2 As to the necessity for demand before action see PARAS 556-557 ante.

3 As to the form of judgment see PARA 653 post. As to damages generally see DAMAGES.

4 As to waiver see PARA 640 post.

**UPDATE**

**542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(f) Remedies/614. Concurrent claims.

#### **614. Concurrent claims.**

Where goods are the subject of two or more claims for conversion<sup>1</sup>, whether or not the claims are founded on the same wrongful act or any of them relate also to other goods<sup>2</sup>, and proceedings are brought in a county court on one of the claims, and are still pending, any proceedings on another of those claims which could be brought in the High Court may be brought in the same county court notwithstanding that they would otherwise be outside the financial or territorial jurisdiction of that court<sup>3</sup>.

Similarly, where proceedings are brought on one of the claims in the High Court and proceedings on any other are brought in a county court, whether prior to the High Court proceedings or not, the High Court may, on the application of the defendant, after notice has been given to the claimant in the county court proceedings: (1) order that the county court proceedings be transferred to the High Court<sup>4</sup>; and (2) order security for costs or impose such other terms as the court thinks fit<sup>5</sup>.

These provisions also apply where goods are the subject of two or more claims<sup>6</sup> for an allowance for improvement of the goods<sup>7</sup>.

1 These provisions also apply in respect of other torts of wrongful interference with goods, ie trespass to goods, negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 s 9(1). As to the scope of the Act see PARA 545 ante.

2 Ibid s 9(1).

3 See ibid s 9(3) (amended by the County Courts Act 1984 s 148(1), Sch 2 Pt V para 65; and the County Courts (Northern Ireland) Order 1980, SI 1980/397 (NI 3), art 68(2), Sch 1 Pt II). The financial and territorial jurisdiction referred to is that imposed by the County Courts Act 1984 and the County Courts Rules 1981: see the Torts (Interference with Goods) Act 1977 s 9(3) (as so amended); and COURTS.

4 Ibid s 9(4)(a).

5 Ibid s 9(4)(b).

6 ie claims under ibid s 6: see PARA 623 post.

7 Ibid s 9(2).

#### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/615. Normal measure of damages.

*(g) Measure of Damages*

**615. Normal measure of damages.**

There is no universal rule for the assessment of damages in conversion<sup>1</sup>. Conversion varies widely both in form and in effect<sup>2</sup> and requires a flexible remedial response<sup>3</sup>. In general, damages in conversion are compensatory<sup>4</sup>, their object being to repair the actual loss which the claimant suffers by reason of the conversion<sup>5</sup>. This conforms to the general rule that damages in tort must (so far as money can do so) put the person whose right has been invaded in the same position as if it had been respected<sup>6</sup>. Accordingly, an award of damages in conversion must operate neither by way of penalty to the defendant<sup>7</sup> nor by way of windfall to the claimant<sup>8</sup>. In general, there must also be a causal connection between the act of conversion and the loss sustained<sup>9</sup>, and proof of actual loss<sup>10</sup>.

1 *Brandeis Goldschmidt & Co Ltd v Western Transport Co Ltd* [1981] QB 864 at 872, [1982] 1 All ER 28 at 33, CA, per Brandon LJ; *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129 at 131-132, [1990] 1 WLR 409 at 412-413, PC; *IBL Ltd v Coussens* [1991] 2 All ER 133, CA; and see *Caxton Publishing Co Ltd v Sutherland Publishing Co Ltd* [1939] AC 178 at 191-192, [1938] 4 All ER 389 at 396-397, HL, per Lord Roche.

2 See PARA 542 et seq ante.

3 *IBL Ltd v Coussens* [1991] 2 All ER 133, CA. 'So with permanent deprivation or wrongful appropriation of a chattel one of a variety of tests may be the best available test according to circumstances': *Caxton Publishing Co Ltd v Sutherland Publishing Co Ltd* [1939] 1 AC 178 at 192, [1938] 4 All ER 389 at 397, HL, per Lord Roche.

4 *Albacruz (Cargo Owners) v Albazero (Owners)*, *The Albazero* [1977] AC 774 at 841, [1976] 3 All ER 129 at 132, HL, per Lord Diplock; *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, citing *Strand Electric and Engineering Co Ltd v Brisford Entertainments Ltd* [1952] 2 QB 246 at 253, [1952] 1 All ER 796 at 800 per Denning LJ; *IBL Ltd v Coussens* [1991] 2 All ER 133, CA. See also *Butler v Egg and Egg Pulp Marketing Board* (1966) 114 CLR 185, Aust HC.

5 *Williams v Peel River Land and Mineral Co Ltd* (1887) 55 LTNS 689, CA; *Brandeis Goldschmidt & Co Ltd v Western Transport Co Ltd* [1981] QB 864, [1982] 1 All ER 28, CA; *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; *IBL Ltd v Coussens* [1991] 2 All ER 133, CA. See also *Albacruz (Cargo Owners) v Albazero (Owners)*, *The Albazero* [1977] AC 774, [1976] 3 All ER 129, HL; *Williams v Archer* (1845) 5 CB 318, 5 Ry & Can Cas 289, 17 LJCP 82, Ex Ch; *Barrow v Arnaud* (1846) 8 QB 604, 6 LTOS 453, 10 Jur 319, Ex Ch.

6 *Albacruz (Cargo Owners) v Albazero (Owners)*, *The Albazero* [1977] AC 774 at 841, [1976] 3 All ER 129 at 132, HL, per Lord Diplock, who further held that the same rule applies to damages in contract. See generally DAMAGES vol 12(1) (Reissue) PARA 819.

7 *Williams v Peel River Land and Mineral Co Ltd* (1887) 55 LTNS 689 at 692, CA, per Bowen LJ; *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129 at 132, [1990] 1 WLR 409 at 413, PC.

8 See DAMAGES vol 12(1) (Reissue) PARAS 862, 983.

9 See *Kitano v Commonwealth of Australia* (1973) 129 CLR 151 (affd on other grounds [1976] AC 99, PC); *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294 at 298-299, [1983] 1 WLR 599 at 603-604, CA, per Bush LJ, where it was held that losses claimed by the plaintiff in relation to goods leased by him on hire purchase to a third person did not flow from the defendant's conversion of the goods but from the third person's default under the hire purchase agreement. See also *Millar v Candy* (1981) 58 FLR 145, Aust HC. See also DAMAGES vol 12(1) (Reissue) PARA 854 et seq.

10 *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864 at 873, [1982] 1 All ER 28 at 34, CA, per Brandon LJ. As to the effect of a compensation order, made by a court in which the converter has been convicted of a criminal offence, upon the measure of damages recoverable against him in subsequent civil proceedings see PARAS 682-683 post.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/616. Conventional measure: value of goods.

#### 616. Conventional measure: value of goods.

The conventional measure of damages in conversion is the value of the goods converted<sup>1</sup> together with any consequential loss which is not too remote<sup>2</sup>. That measure normally applies where the conversion takes the form a wrongful deprivation or misappropriation<sup>3</sup> and the goods are not later returned<sup>4</sup>. In all instances, however, a sum either higher or lower than the value of the goods may be ordered where that is more appropriate to compensate the claimant<sup>5</sup>.

1 *Mercer v Jones* (1813) 3 Camp 477; *Reid v Fairbanks* (1853) 13 CB 692; *France v Gaudet* (1871) LR 6 QB 199 at 204, Ex Ch; *The Arpad* [1934] P 189 at 234, CA, per Maugham LJ ('It has been held repeatedly that in trover the measure of damage generally speaking is the value of the goods'); *Solloway v McLaughlin* [1938] AC 247 at 257-259, [1937] 4 All ER 328 at 332-333, PC; *Caxton Publishing Co Ltd v Sutherland Publishing Co* [1939] AC 178 at 192, 203, [1938] 4 All ER 389 at 397, 404, HL, per Lord Roche; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA; *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294, [1983] 1 WLR 599, CA, where it was held that the price reached at a subsequent sale of the converted chattel at a public auction was *prima facie* good evidence of its value at the date of the auction and, on the facts, good evidence of its value at the time of the earlier conversion. See also, on the question of evidence as to value, *The Arpad* supra, explaining *France v Gaudet* supra; *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA (wrongfully-detained machine eventually returned by detainer and sold by owner for £5,000; detainer had, shortly after owner's original demand for return, offered to buy machine for that amount; held, damages being assessed by reference to fall in value over period of detention and other alleged losses being too remote (as to which see PARA 615 ante), amount offered by detainer was evidence of value of machine at time of offer; hence no fall in value over relevant period and nominal damages awarded). See also *Martin v LCC* [1947] KB 628, [1947] 1 All ER 783 (market value included tax on the goods); *Hall & Co Ltd v Pearlberg* [1956] 1 All ER 297n, [1956] 1 WLR 244 (where the question of tax in awarding damages in conversion is further considered). As to variations in value between the dates of conversion and judgment see PARA 618 post. As to the assessment of value generally see PARA 627 post.

2 *General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd* [1963] 2 All ER 314, [1963] 1 WLR 644, CA. See also *Douglas Valley Finance Co Ltd v S Hughes (Hirers) Ltd* [1969] 1 QB 738, [1966] 3 All ER 214; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 181, CA, per Ackner LJ; *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184 at 188, [1983] 1 WLR 959 at 963 per Parker J. As to consequential damage see PARA 630 post. See also *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA (lessor suffering loss of exceptionally lucrative hiring contract, yielding considerably more than market value of chattel, by reason of defendant's conversion; damages not awarded by reference to lost hiring contract, as converter could not reasonably have anticipated it; loss therefore too remote). The court may, in awarding damages by reference to the value of goods, grant the converter an allowance to reflect any increase in their value attributable to expenditure or work on them by the defendant: see the Torts (Interference with Goods) Act 1977 s 6; and PARA 623 post.

3 'So with permanent deprivation or wrongful appropriation of a chattel one of a variety of tests may be the best available test according to circumstances': *Caxton Publishing Co Ltd v Sutherland Publishing Co Ltd* [1939] AC 178 at 192, [1938] 4 All ER 389 at 397, HL, per Lord Roche.

4 Cf *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC (value at date of conversion awarded on irreversible conversion of share certificates, followed by converter's repurchasing at lower value and return to owner).

5 *IBL Ltd v Coussens* [1991] 2 All ER 133, CA.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/617. Higher or lower sum than value of goods.

#### 617. Higher or lower sum than value of goods.

Damages amounting to a higher sum than the value of the goods converted may be awarded, for example, where the loss of profit suffered on a particular transaction which is aborted by reason of the conversion exceeds the value of the goods<sup>1</sup>. A sum lower than the value of the goods might be awarded, for example, to a person (such as a bailor) whose interest in the goods is less than their full value at the date of conversion, and who claims against another person (such as a bailee) who also has an interest in the goods<sup>2</sup>. Damages amounting to less than full market value might also be awarded where a bailee, having unlawfully detained goods, returns them to the claimant before the claimant would have sold or otherwise used them<sup>3</sup>; or where a seller whose buyer has not yet paid the price, but to whom property has already passed, converts the goods before delivery<sup>4</sup>. In a claim for wrongful detention where the claimant sustains no substantial loss and the defendant merely denies the claimant's right, which right is vindicated in the course of the action, nominal damages are awarded<sup>5</sup>. That will be the case, for example, where the claimant had intended to keep the goods for eventual use in some industrial process and he recovers possession of them from the detainer before the time appointed for such use arrives<sup>6</sup>. But where goods are irreversibly or irretrievably converted (as where share certificates are taken and sold) the measure of damages is *prima facie* the value of the goods at the date of the conversion<sup>7</sup>.

1 For example, where the plaintiff lessor had an opportunity of leasing the goods under a lucrative hiring contract to a reliable and solvent hirer, and the converter could reasonably have anticipated the loss of that contract, and the plaintiff was unable to find a comparably lucrative substitute contract, as a consequence of his conversion, with the result that the loss is not too remote to be recoverable: cf *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA (following *The Arpad* [1934] P 189, CA), where the loss of the new leasing contract was held to be too remote a consequence, and damages fell to be assessed according to the fall in value (if any) between the date of the demand and the date of return; since there was no such fall, the defendant detainer having early in the period of detention offered the plaintiffs the same sum for goods as the plaintiffs later got by selling them when the detention was ended, nominal damages were awarded. As to nominal damages see PARA 635 post; and DAMAGES vol 12(1) (Reissue) PARA 813.

2 For example, where the goods were bailed by the plaintiff owner to the defendant under a hire-purchase contract, and the hire-purchase debt was part paid at the time of conversion. The damages awarded to the bailor in such a case (whether against the bailee or against some third party converter) are normally the outstanding debt and such consequential loss as is not too remote: *Wickham Holdings Ltd v Brooke House*

*Motors Ltd* [1967] 1 All ER 117, [1967] 1 WLR 295, CA; *Belsize Motor Supply Co v Cox* [1914] 1 KB 244; cf *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294, [1983] 1 WLR 599, CA; *Millar v Candy* (1981) 58 FLR 145, Aust HC; and see PARA 631 post. This limited measure of damages applies notwithstanding that the bailee has repudiated the contract of hire-purchase: *Socgen Lease Ltd v Kredietenfinance Corpn Ltd* (1997, unreported). Cf *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC, which held that an immediate right to possession of the goods entitles the claimant in conversion to damages assessed according to their full value. If the bailor under a hire-purchase agreement has, by reason of the hirer's repudiation, gained an immediate right to possession (and without such a right he cannot sue in conversion anyway) it is arguable that his own damages should, in accordance with the principle recognised in *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* supra, be measured by full value of the goods. Any contrary result would require the court to recognise that the hirer's past payments still constitute some form of deductible interest in the goods.

3 *Brandeis Goldschmidt & Co Ltd v Western Transport Co Ltd* [1981] QB 864, [1982] 1 All ER 28, CA; cf *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA (plaintiff's intended use under lucrative hiring contract held too remote, as beyond defendant's reasonable anticipation, for its loss to be recoverable as damages issuing from the defendant's detention).

4 *Chinery v Viall* (1860) 5 H & N 288 (unpaid vendor who had sold goods on credit resold them to third party before credit period expired; held, original buyer could recover in conversion only the full value of the goods converted but minus the outstanding price). 'A man cannot by merely changing the form of action entitle himself to recover damages greater than the amount to which he is in law entitled according to the true facts of the case and the real nature of the transaction': *Chinery v Viall* supra at 295 per Bramwell B. It has been held, however, that if the goods have already been delivered to the buyer, and the unpaid seller wrongfully seizes them from him, the buyer is entitled to the full value of the goods, because notwithstanding the retaking the buyer remains liable to the seller for the price: *Gillard v Brittan* (1841) 8 M & W 575. This would now be the subject of a counterclaim by the seller against the buyer: see CIVIL PROCEDURE vol 11 (2009) PARA 634 et seq. Where the conversion is committed by a third party to the contract of sale, the buyer who has either possession or (it seems) an immediate right to possession at the time of the conversion can at common law recover from the converter the full value of the goods: *Turner v Hardcastle* (1862) 11 CBNS 683; *Johnson v Lancashire and Yorkshire Rly Co and Wigan Waggon Co Ltd* (1878) 3 CPD 499; *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC (pledgee of goods having immediate right of possession could recover full value of goods and not (if less) mere extent of exposure under pledge). As to the time at which the value of the goods is assessed in conversion claims see PARA 618 ante.

5 *Williams v Peel River Land and Mineral Co Ltd* (1886) 55 LT 689 at 692, CA, per Bowen LJ; *Bryanston Leasings Ltd v Principality Finance Ltd* [1977] RTR 45; *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864 at 872, [1982] 1 All ER 28 at 33, CA, per Brandon LJ. See further PARA 635 post. See also *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA, where the plaintiff's loss by reason of the defendant's adverse detention was held to be nominal, the goods apparently retaining their second-hand sale value of approximately £5,000 throughout the period of their unlawful detention until their return to the plaintiff; the plaintiff's alleged loss of approximately £13,000 under a particularly lucrative potential hiring contract with a third party, aborted by reason of the detention, was held to be too remote to be recoverable, since the defendant could not reasonably have anticipated this loss, and the true lucrative opportunities under that contract probably did not exceed the current market value of the goods in any event. See also PARA 630 post.

6 *Brandeis Goldschmidt & Co Ltd v Western Transport Co Ltd* [1981] QB 864, [1982] 1 All ER 28, CA; approved in *IBL Ltd v Coussens* [1991] 2 All ER 133, CA.

7 Cf *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; and see PARA 619 post.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/618. Time by reference to which value of goods assessed.

### **618. Time by reference to which value of goods assessed.**

Where damages in conversion fall to be awarded according to the value of the goods converted<sup>1</sup>, the time by reference to which that value is to be assessed is that time which is most appropriate to do justice between the parties and to compensate the claimant for the loss sustained<sup>2</sup>. The abolition of the tort of detinue<sup>3</sup> does not inhibit the court from granting in conversion a measure of damages traditionally granted in detinue<sup>4</sup>, namely the value of the goods at the date of judgment, rather than their value at the date of conversion<sup>5</sup>. The court's ability to award damages according to value at the date of judgment may either increase or reduce the sum awarded, according to whether the market has risen or fallen since the conversion<sup>6</sup>.

1 See PARA 616 ante. As to damages generally see DAMAGES.

2 *IBL Ltd v Coussens* [1991] 2 All ER 133, CA.

3 See the Torts (Interference with Goods) Act 1977 s 2(1), (2); and PARA 542 ante. The Torts (Interference with Goods) Act 1977, while abolishing detinue, did not interfere with the common law rules relating to damages for conversion: *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294 at 298, [1983] 1 WLR 599 at 604, CA, per Bush LJ. The Torts (Interference with Goods) Act 1977 s 3 in effect preserves the remedies for what previously constituted detinue: *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184 at 187, [1983] 1 WLR 959 at 962 per Parker J; *Finlayson v Taylor* (1983) 133 NLJ 720; *IBL Ltd v Coussens* [1991] 2 All ER 133, CA. A claim in conversion lies in respect of all conduct which formerly constituted detinue: see *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375.

4 In detinue the plaintiff asserted and maintained his property in the goods up to the date of the verdict (*Rosenthal v Alderton & Sons Ltd* [1946] KB 374 at 377-378, [1946] 1 All ER 583 at 584, CA, per Evershed J) and in consequence the damages awarded (where goods were not returned) were in general the market value of the goods at the date of judgment together with any consequential damage which was not too remote: *Phillips v Jones* (1850) 15 QB 859 at 867-868, Ex Ch; *Rosenthal v Alderton & Sons Ltd* supra. See also *Capital Finance Co Ltd v Bray* [1964] 1 All ER 603 at 607, [1964] 1 WLR 323 at 329, CA, per Lord Denning MR; *Finlayson v Taylor* (1983) 133 NLJ 720. This measure of damages applied whether the defendant had converted the goods by selling them or had failed to return them for some other reason: *Rosenthal v Alderton & Sons Ltd* supra at 379 and 585 per Evershed J. But this measure was not immutable and damages might, where justice so demanded, be awarded in detinue by reference to a date earlier than that of judgment: *IBL Ltd v Coussens* [1991] 2 All ER 133, CA. Damages in detinue were subject to an allowance in respect of expenditure or work on them by the defendant (*Munro v Willmott* [1949] 1 KB 295, [1948] 2 All ER 983); but as to the present position see now PARA 623 et seq post. Where the value of goods fell between the refusal to return them (ie the date at which a cause of action in detinue accrued) and judgment, the damages for detention might, if this represented a loss actually suffered by the plaintiff, include the amount of that depreciation: *Williams v Archer* (1847) 5 CB 318, Ex Ch (detinue for scrip certificates); *Rosenthal v Alderton & Sons Ltd* supra; cf *Strand Electric and Engineering Co Ltd v Brisford Entertainments Ltd* [1952] 2 QB 246 at 254, [1952] 1 All ER 796 at 801, CA, per Denning LJ. See also *Williams v Peel River Land and Mineral Co Ltd* (1886) 55 LT 689, CA. As to the current position in conversion see PARA 620 post. See also the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 88 (in a proper case the plaintiff could and can now recover as damages in conversion the amount of a rise in the value of the goods).

5 *IBL Ltd v Coussens* [1991] 2 All ER 133, CA.

6 See further PARAS 619-620 post.

### **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/619. Rising market.

### **619. Rising market.**

Although there is no universal rule regarding the date by reference to which the value of converted goods is to be assessed<sup>1</sup>, where the market has risen, the normal measure of damages in conversion is the value of the goods at the date of judgment<sup>2</sup>. However, damages may be assessed by reference to their value at an earlier date if the claimant could reasonably have taken earlier steps to prevent or reverse the conversion<sup>3</sup>, or could reasonably have issued proceedings earlier than he did<sup>4</sup>. Similarly, if the claimant would have sold the goods at their contemporary market value at some time before judgment in the event that they had not been detained by the defendant or had been returned to the claimant earlier than they were, damages may be awarded according to the value at the time of the notional disposal<sup>5</sup>. Where a claimant could reasonably have acquired replacement goods at some time between the dates of conversion and judgment, damages may be assessed by reference to that date<sup>6</sup>. Victims of acts of conversion are not, however, ordinarily obliged to incur substantial capital expenditure in order to mitigate their loss<sup>7</sup>.

1 *IBL Ltd v Coussens* [1991] 2 All ER 133 at 139-140, CA, per Neill LJ; but see *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129 at 131, [1990] 1 WLR 409 at 412, PC, citing *Solloway v McLaughlin* [1937] 4 All ER 328, [1938] AC 247; and see PARA 618 ante.

2 See *IBL Ltd v Coussens* [1991] 2 All ER 133 at 139-140, CA, per Neill LJ; *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129 at 131, [1990] 1 WLR 409 at 412, PC, citing *Sachs v Miklos* [1948] 2 KB 23, [1948] 1 All ER 67. For older authority see *Greening v Wilkinson* (1825) 1 C & P 625, followed in *Johnson v Hook* (1883) 31 WR 812 (court may assess value of goods at date subsequent to conversion); *Aitken v Gardiner and Watson* [1956] OR 589, 4 DLR (2d) 119. Cf *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA (average market value taken over relevant period when plaintiffs ought to have bought in the market). Market value in this context includes tax on the goods: see *Martin v LCC* [1947] KB 628, [1947] 1 All ER 783; and PARA 616 ante. As to falls in market value between the dates of conversion and judgment see PARA 620 post.

3 *IBL Ltd v Coussens* [1991] 2 All ER 133 at 139-140 per Neill LJ. See also *Sachs v Miklos* [1948] 2 KB 23, [1948] 1 All ER 67, CA, where there was no finding that a letter written by the defendant to the plaintiff informing him of his intention to sell the goods was ever received by the plaintiff; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA, where it was held that the plaintiffs could not reasonably have been expected to take steps to replace the goods until some three weeks after the act of conversion. See also DAMAGES vol 12(1) (Reissue) PARAS 1041-1043.

4 *IBL Ltd v Coussens* [1991] 2 All ER 133 at 139-140, CA, per Neill LJ.

5 *IBL Ltd v Coussens* [1991] 2 All ER 133 at 139-140, CA, per Neill LJ.

6 *IBL Ltd v Coussens* [1991] 2 All ER 133, CA (semble).

7 *Bacon v Cooper (Metals) Ltd* [1982] 1 All ER 397 (contract). See generally DAMAGES vol 12(1) (Reissue) PARAS 819, 983.

### **UPDATE**

## **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/620. Falling market.

### **620. Falling market.**

Where the market value of goods has fallen after the conversion, the defendant cannot generally benefit from the decline<sup>1</sup>, but is liable for the value of the goods at the date of the conversion<sup>2</sup>. Damages may, however, be assessed by reference to the value of the goods at some date between that of conversion and that of judgment if the claimant could reasonably have acted earlier than he did to prevent, redress or mitigate the conversion<sup>3</sup>. There is, however, no absolute rule<sup>4</sup>, and much may depend on the form of the conversion<sup>5</sup>.

1 *Solloway v McLaughlin* [1938] AC 247 at 259, [1937] 4 All ER 328 at 333, PC (fall in market value of goods between conversion and judgment not ordinarily taken into account in favour of defendant in conversion).

2 *Solloway v McLaughlin* [1938] AC 247 at 259, [1937] 4 All ER 328 at 333, PC. This decision is not affected by *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA: see *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129 at 132, [1990] 1 WLR 409 at 413, PC.

3 *IBL Ltd v Coussens* [1991] 2 All ER 133 at 142, CA, per Nicholls LJ.

4 It is said, for example, that a claimant will not recover damages based on the value of the goods before the fall in the market if he would not have sold them during the period between the higher and lower values: see *Barrow v Arnaud* (1846) 8 QB 604, Ex Ch; *Williams v Archer* (1847) 5 CB 318, Ex Ch; *Williams v Peel River Land and Mineral Co Ltd* (1886) 55 LT 689, CA; *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA. Conversion by adverse temporary detention (the form of conversion principally at issue in these cases) may attract a different mode of assessment from conversion by outright unlawful taking: see *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; and PARA 621 post.

5 As to the forms of conversion generally see PARA 542 et seq ante.

### **UPDATE**

## **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH

GOODS/(B) Conversion/(g) Measure of Damages/621. Irreversible conversion and temporary deprivation.

## 621. Irreversible conversion and temporary deprivation.

Where goods are irreversibly or irretrievably converted (as where the converter misappropriates share certificates and disposes of them to a third person)<sup>1</sup> the measure of damages is *prima facie* the value of the goods at the date of the conversion<sup>2</sup>. If the market value of the goods falls after the conversion, the defendant cannot, by purchasing and returning to the claimant the same or equivalent goods, avoid paying damages based on the original value of the goods at the time of the conversion<sup>3</sup>, though the market value of goods restored to the claimant will be deducted from the value of the goods at the date of conversion in assessing the damages payable<sup>4</sup>. Where, on the other hand, the claimant did not acquire the goods for resale<sup>5</sup>, or would not in the ordinary way have sold the goods before the date of judgment<sup>6</sup>, and the act of conversion deprives him of the goods only temporarily, damages may be nominal<sup>7</sup>. Where the claimant would ordinarily have sold the goods before judgment, but was prevented from doing so by the conversion, damages again depend on the form of conversion. In the case of an irreversible conversion, such as a wrongful sale to a third party, damages are assessed according to the value of the goods when converted<sup>8</sup>. In the case of a conversion which is not irreversible, such as a wrongful detention, damages are probably assessed according to the date on which the defendant refused the claimant's demand (if any) for the return of the goods<sup>9</sup>, or the date on which the claimant would have sold them had the demand been heeded<sup>10</sup>, though the court may take an average over the period of detention<sup>11</sup>. In other cases, damages in respect of goods converted on a falling market may, according to circumstances, reflect their value at the date on which a bailee refuses a demand for their return, or at the date of judgment<sup>12</sup>. Where the claimant is prevented by an adverse detention from leasing the goods to a third party, the recovery of damages by reference to that prospective leasing contract will normally depend on whether the defendant should reasonably have anticipated that the detention would deprive the claimant both of that and of any similarly lucrative opportunity<sup>13</sup>. If not, damages may be restricted to any fall in the market value of the goods between the date of demand and the date of return, and where the value of the goods has remained constant during the detention, damages will be nominal<sup>14</sup>.

1 *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC.

2 *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC.

3 *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC.

4 *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC (owner must give credit for value of restored goods as at date of restoration, and damages will be reduced by that amount).

5 As to where the claimant, who would not have sold or used the goods over the relevant period, recovers them from a carrier after a period during which the carrier has wrongfully asserted a lien see *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA.

6 If the claimant would have sold the goods before judgment, the relevant date may be that at which the claimant had been disabled from selling: see *Barrow v Arnaud* (1846) 8 QB 604, Ex Ch.

7 *Williams v Peel River Land and Mineral Co Ltd* (1886) 55 LT 689 at 692, CA, per Bowen LJ; *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA. See also *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA; and PARA 635 post.

8 *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC.

9 *Williams v Archer* (1847) 5 CB 318; approved in *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; cf *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA.

10 *Barrow v Arnaud* (1846) 8 QB 604, Ex Ch; *Williams v Archer* (1847) 5 CB 318; *Williams v Peel River Land and Mineral Co Ltd* (1886) 55 LT 689, CA (approved in *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA). See also *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; *IBL Ltd v Coussens* [1991] 2 All ER 133 at 139, CA, per Neill LJ.

11 *Barrow v Arnaud* (1846) 8 QB 604, Ex Ch; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA (average market value taken over relevant period when plaintiffs ought to have bought in the market); and see Hudson 'Money Claims for Misuse of Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) Ch 33 p 846 et seq.

12 *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC.

13 *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA. See also PARA 630 post.

14 *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA. See also PARA 630 post.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/622. Aggravated and exemplary damages.

### 622. Aggravated and exemplary damages.

Subject to normal conditions, aggravated damages<sup>1</sup> may in principle be awarded in conversion<sup>2</sup>. Persons wrongfully deprived of the possession of goods (whether by conversion or some other tort) may also be entitled to damages for their resultant physical inconvenience<sup>3</sup> and mental suffering<sup>4</sup>. Exemplary or punitive damages may be available to claimants for conversion provided that the conditions necessary to such an award are fulfilled<sup>5</sup>.

1 See generally DAMAGES vol 12(1) (Reissue) PARAS 1111-1114.

2 See *Mafo v Adams* [1970] 1 QB 548 at 558, [1969] 3 All ER 1404 at 1410, CA, per Widgery LJ; Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 91; *Aggravated, Exemplary and Restitutionary Damages* (Law Com No 247) (1997); and DAMAGES vol 12(1) (Reissue) PARA 111 et seq. Aggravated damages are not available in an action for negligence: see DAMAGES vol 12(1) (Reissue) PARA 1114. The unavailability of aggravated damages in a negligence action suggests that aggravated damages may not generally be available in respect of that statutory form of conversion which consists in the negligent loss or destruction of goods in breach of the defendant's duty as bailor: see the Torts (Interference with Goods) Act 1977 s 2(2); and PARA 548 ante.

3 See generally DAMAGES vol 12(1) (Reissue) PARA 878 et seq.

4 *Millar v Candy* (1981) 58 FLR 145, Aust HC (negligence; collision); *Graham v Voigt* (1989) 95 FLR 146 (negligence by bailee). See generally Palmer and Hudson 'Damages for Distress and Loss of Enjoyment in Claims involving Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) Ch 34 pp 867, 875-879, 880-887, 889-894. In the absence of any accompanying physical inconvenience to the claimant, damages in tort for mental suffering may be available only where the subject matter of the duty in tort was to provide pleasure, peace of mind or relief from stress: see DAMAGES vol 12(1) (Reissue) PARA 960.

5 See *Mafo v Adams* [1970] 1 QB 548, [1969] 3 All ER 1404, CA; and see generally DAMAGES vol 12(1) (Reissue) PARAS 1115-1117. For an example of exemplary damages available under statute see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 13(2); and ARMED FORCES.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/623. Improvers: value of the goods increased by the defendant.

#### 623. Improvers: value of the goods increased by the defendant.

In proceedings for conversion against a person ('the improver') who has improved the goods the improver may be entitled on assessment of his damages<sup>1</sup> to an allowance for any improvement he may have made to the goods<sup>2</sup>. If it is shown that he acted in the mistaken but honest belief that he had a good title to the goods, an allowance must be made for the extent to which, as at the time at which the goods fall to be valued in assessing damages, the value of the goods is attributable to the improvement<sup>3</sup>. This provision applies, with the necessary modifications, to a purported bailment or other disposition of goods as it applies to a purported sale of goods<sup>4</sup>.

Normally the improver's conversion of the goods precedes his improvement of them; since damages in conversion frequently fall to be assessed at the date of the conversion<sup>5</sup>, the statutory allowance would in many cases be inapplicable and unnecessary<sup>6</sup>. However, the statutory allowance will apply where the improver improves the goods prior to converting them, as where he comes into possession of the goods as a bailee<sup>7</sup>, or where damages fall to be assessed as at a date after the conversion<sup>8</sup>.

1 See PARA 626 post.

2 The allowance applies also to other proceedings for wrongful interference, ie trespass to goods, negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 ss 1, 6(1). As to the scope of the Act see PARA 545 ante.

3 Ibid s 6(1). It appears that the burden of proving the necessary belief in his title, an improvement to the goods, and a resultant increase in the value of the goods rests upon the improver.

4 Ibid s 6(4). See also PARA 624 note 7 post; and LIEN vol 68 (2008) PARA 833. See further Palmer and Hudson 'Improving Stolen Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) pp 925-928.

5 See PARA 618 et seq ante.

6 This statement follows from the fact that the Torts (Interference with Goods) Act 1977 s 6(1) makes no change in the time at which damages are to be assessed.

7 *Munro v Willmott* [1949] 1 KB 295, [1948] 2 All ER 983.

8 See generally PARA 618 ante.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

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#### **624. Purported purchasers of improved goods.**

In assessing damages in proceedings for conversion<sup>1</sup> against a person who has purported to purchase the goods ('the purchaser') in good faith from a person who has improved them ('the improver'), an allowance is made for the extent to which the value of the goods is attributable to the improvement<sup>2</sup>.

Similarly, where, after a purported sale from the improver to a purchaser, the goods have passed by a further purported sale on one or more occasions, a person who purported to purchase the goods in good faith on any such occasion must be given the allowance in proceedings against him for conversion<sup>3</sup>.

In either of these cases, if the person purporting to sell the goods acted in good faith, the allowance is made on the same principle in proceedings by the purchaser for recovery of the purchase price because of failure of consideration<sup>4</sup>, or in any other proceedings founded on that failure of consideration<sup>5</sup>.

It follows that where a person in good faith buys a stolen car from the improver and is sued in conversion by the true owner the damages may be reduced to reflect the improvement, but if the person who bought the stolen car from the improver sues the improver for failure of consideration, and the improver acted in good faith, then ordinarily a comparable reduction will be made in the damages which he recovers from the improver<sup>6</sup>.

These provisions apply with the necessary modifications to a purported bailment or other disposition of goods as they apply to a purported sale of goods<sup>7</sup>.

1 These provisions apply also to other proceedings for wrongful interference, ie trespass to goods, negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 ss 1, 6(2). As to the scope of the Act see PARA 545 ante.

2 See *ibid* s 6(2)(a). The allowance is made on the principle set out in s 6(1) (see PARA 623 ante): s 6(2). It seems unlikely, however, that it is necessary to show that the improver acted in the mistaken but honest belief that he had a good title to the goods. The burden of proving good faith, improvement of the goods and the resultant increase in value presumably rests on the purchaser.

3 See *ibid* s 6(2)(b). As to the matters that need to be shown and the burden of proving them see note 2 *supra*. Section 6(2)(b) also applies to other proceedings for wrongful interference: see s 6(2); and note 1 *supra*.

4 As to actions for the recovery of the purchase price see RESTITUTION vol 40(1) (2007 Reissue) PARA 87 et seq.

5 Torts (Interference with Goods) Act 1977 s 6(3). The allowance is made on the principle set out in s 6(1) (see PARA 623 ante): s 6(3). The burden of establishing good faith on the part of the person selling the goods, as well as improvement of the goods and a resulting increase in value, presumably rests on the person selling the goods. As to concurrent actions see PARA 614 ante. As to other remedies available to a purchaser see generally RESTITUTION.

6 Ibid s 6(2).

7 Ibid s 6(4). This provision would apply in favour of, eg, a purported hirer on hire purchase. It is not certain whether it would operate to displace the normal rule that a lien executed over goods without the owner's authority would not be binding upon him. See on this point LIEN vol 68 (2008) PARA 833.

## UPDATE

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#### 625. Survival of a common law allowance.

It is unclear whether any right to an allowance for improvement to another person's chattel now exists outside the statutory conditions<sup>1</sup>. Formerly, under common law principles, defendants liable in conversion (or detinue<sup>2</sup>) were granted a reduction in the damages which might otherwise be payable, to reflect expenditure incurred by them in improving the goods; and this allowance could be made even where the defendant knew that the goods belonged to the claimant, or to someone other than himself, at the time of the improvement<sup>3</sup>. The award of such an allowance was seen as consistent with the compensatory function of damages in conversion, since by granting it the court sought to repair the claimant's actual loss and to deny him a windfall<sup>4</sup>. Similarly, where a defendant who was not guilty of fraud or negligence incurred in good faith expenses with respect to the goods and the goods were delivered up to the claimant who had the benefit of those expenses, the defendant was entitled to have those expenses taken into account in an award of damages against him<sup>5</sup>. This principle was applied notably to cases of conversion of minerals<sup>6</sup>. In this, as in other contexts, no allowance in respect of improvement would be necessary where the conversion preceded the improvement and damages fell to be assessed by reference to the value of the goods at the time of the conversion<sup>7</sup>.

It is submitted that these principles survive the enactment of the statutory allowance<sup>8</sup>. The statutory allowance thus provides merely a supplementary and not an exclusive allowance for improvers. But it is improbable that any equivalent rules existed to protect a purported purchaser from the improver<sup>9</sup>. In such a case the statutory allowance stands alone.

1 See generally Palmer and Hudson 'Improving Stolen Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) p 919. As to the statutory conditions see PARAS 623-624 ante.

2 Detinue is now abolished: see the Torts (Interference with Goods) Act 1977 s 2(1); and PARA 542 ante.

3 *Reid v Fairbanks* (1853) 13 CB 692; *Munro v Willmott* [1949] 1 KB 295, [1948] 2 All ER 983. See also Palmer and Hudson 'Improving Stolen Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) pp 923-924.

The common law allowance applied where damages in conversion fell to be assessed by reference to the value of the chattel at some time after the improvement, as where the improvement preceded the conversion. It was awardable where damages fell to be assessed at the date of judgment, as opposed to that of conversion: *Munro v Willmott* supra at 298 and 986 per Lynskey J. If, on the other hand, damages were to be assessed as at a date before the improvement (as where the conversion preceded the improvement and the normal date of assessment at the time of conversion applied) the benefit of the improvement would accrue to the improver without the need for any allowance to be deducted from damages: see *Peruvian Guano Co Ltd v Dreyfus Bros & Co* [1892] AC 166 at 176, HL, per Lord Macnaghten. See also Palmer and Hudson 'Improving Stolen Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) pp 922-923. The result would be the same under the Torts (Interference with Goods) Act 1977 s 6(1), which does not alter the position at common law as to the date at which damages are assessed: see PARA 623 text and note 5 ante. As to the time by reference to which the value of goods is assessed for the purposes of damages in conversion see generally PARA 618 et seq ante. As to the award of an allowance in direct proceedings for restitution for unjust enrichment at common law, where the goods have returned to the owner and the remedy of damages is therefore inappropriate, see *Greenwood v Bennett* [1973] QB 195 at 202, [1972] 3 All ER 586 at 589, CA, per Lord Denning MR (distinguished in *Gray's Truck Centre Ltd v Olaf F Johnson Ltd* (1990) Lexis, Enggen Library, Cases File, CA. See also McKendrick 'Restitution and the Misuse of Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) pp 898-908.

4 See PARA 615 ante.

5 *Clarke v Nicholson* (1835) 1 Cr M & R 724; *Peruvian Guano Co v Dreyfus Bros & Co Ltd* [1892] AC 166, HL; *Greenwood v Bennett* [1973] QB 195, [1972] 3 All ER 586, CA. Cf *Thompson v Castellain* (1862) 13 CBNS 105, where the defendant counterclaimed in contract for expenses. A claimant whose property has been used by the defendant in carrying on the defendant's business cannot recover the profits of the business: *Re Simms, ex p Trustee* [1934] 1 Ch 1, CA. Cf PARA 630 post. In certain circumstances, however, a bailee who derives a benefit from his misuse of the bailor's chattel may be accountable for that benefit although it is not reflected in any loss to the bailor: see *DAMAGES* vol 12(1) (Reissue) PARA 1099.

A defendant who has wrongfully detained goods may not show in mitigation of damages that he has sold the goods and applied the proceeds in satisfaction of a debt owing to him by the claimant (*Edmondson v Nuttall* (1864) 17 CBNS 280; *Johnson v Lancashire and Yorkshire Rly Co and Wigan Waggon Co Ltd* (1878) 3 CPD 499), but he can counterclaim for the debt. As to the position where the defendant has discharged the claimant's debts to third persons cf PARA 628 text and note 2 post. See also *Lloyds Bank Ltd v Chartered Bank of India, Australia and China* [1929] 1 KB 40, CA. As to the effect of the restoration of goods by the defendant to the claimant see PARAS 616 ante, 635, 650, 653 post.

6 See *MINES, MINERALS AND QUARRIES* vol 31 (2003 Reissue) PARA 34. Consistently with the principle stated in the text, a defendant acting in good faith in removing coal from another's seam was liable to that other only for the value of the coal as in the seam, and not for its value at the pithead: *Wood v Morewood* (1841) 3 QB 440. Cf *Martin v Porter* (1839) 5 M & W 351. The distinction appears to lie in the conduct of the defendant. See also *Greenwood v Bennett* [1973] QB 195 at 202, [1972] 3 All ER 586 at 589, CA, per Lord Denning MR. See further *MINES, MINERALS AND QUARRIES* vol 31 (2003 Reissue) PARA 43. See also *DAMAGES* vol 12(1) (Reissue) PARAS 868-870.

7 Cf the Torts (Interference with Goods) Act 1977 s 6(1) (see note 3 supra; and PARA 623 ante).

8 *Ibid* s 6(1) is not expressed to be declaratory of the existing law; neither is it expressed to be in place of it. As to the requirement that statutes altering the common law must do so clearly and unambiguously see *STATUTES* vol 44(1) (Reissue) PARA 1438.

9 See the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) (Cmnd 4774) (1971) PARA 89.

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## **626. Retaking and restitution.**

The statutory allowance for improvements to goods<sup>1</sup> cannot operate where the owner personally retakes the goods from the converter, because the allowance can be made only in proceedings for wrongful interference<sup>2</sup>. Where in proceedings for conversion (or other wrongful interference with goods)<sup>3</sup> the court provides relief by way of an order for delivery of the goods, it may make it a condition of delivery that the statutory allowance is made by the claimant<sup>4</sup>.

1 As to the statutory allowance for improvements to goods see PARAS 623-624 ante.

2 See the Torts (Interference with Goods) Act 1977 s 6; and PARAS 623-624 ante. For the meaning of 'wrongful interference' see PARA 545 ante. As to the retaking of chattels see TORT vol 97 (2010) PARA 476. The converter in such a situation may be able to claim directly against the owner for his expenditure under the doctrine of unjust enrichment: see *Greenwood v Bennett* [1973] QB 195 at 202, [1972] 3 All ER 586 at 589, CA, per Lord Denning MR (distinguished in *Gray's Truck Centre Ltd v Olaf Johnson Ltd* (1990) Lexis, Enggen Library, Cases File, CA. See also McKendrick 'Restitution and the Misuse of Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) pp 898-908.

3 See PARA 542 et seq ante.

4 See the Torts (Interference with Goods) Act 1977 s 3(7), which applies where an allowance is to be made under s 6(1) or s 6(2) in respect of an improvement to the goods, and an order is made under s 3(2)(a) or s 3(2)(b) (see PARA 653 post); in that event, the court may assess the allowance to be made in respect of the improvement, and by the order require, as a condition for delivery of the goods, that allowance to be made by the claimant. Note, however, that s 6(1), (2) enables the court to make an allowance for improvement only to the extent to which, at the time as at which the goods fall to be valued in assessing damages, the value of the goods is attributable to the improvement: s 6(1). It follows that if there is no time at which the goods fall to be valued in assessing damages there can be no allowance under s 3(7). The power of the court to make an order for delivery of goods under s 3(2)(a) does not contemplate any assessment of the value of goods but rather their return and damages for consequential loss; in this event, it would appear that both s 6(1) and s 6(2) and, in consequence, s 3(7) are inapplicable. The position is otherwise in relation to any order for delivery of goods, but with the alternative of paying damages by reference to the value of the goods, under s 3(2)(b). In the event that such an order is made, and the defendant adopts the alternative course of paying damages, the statute does contemplate an assessment of the value of goods and it would appear that both s 6(1) and s 6(2) and, in consequence, s 3(7) are applicable.

Outside the statute, expenditure incurred in improving another person's goods was recovered on appeal when the specific restitution of improved goods had been erroneously ordered in interpleader proceedings: *Greenwood v Bennett* [1973] QB 195, [1972] 3 All ER 586, CA. See also McKendrick 'Restitution and the Misuse of Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) pp 898-908.

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## 627. Assessment of value.

Subject to the rules already mentioned<sup>1</sup>, where damages fall to be awarded on the basis of the value of the goods converted, that value is ordinarily assessed by reference to their market value<sup>2</sup>. Where there is no market in the goods, the value is assessed by the cost of replacing them<sup>3</sup>; and, if no market exists in which to replace them, their value is to be fixed at what the claimant could get by sale to a solvent buyer<sup>4</sup>. Where the goods converted are the subject of a contract for carriage or sale made between the parties, the claimant is not ordinarily entitled to have taken into account a price obtained from a solvent buyer on an existing contract or sub-contract of sale<sup>5</sup>, and this is so whether or not a market in such goods exists generally<sup>6</sup>. The position may be otherwise where the defendant had notice of such a contract or sub-contract at the time of conversion<sup>7</sup>, or where the price payable under the onward sale contract reflects the true market price<sup>8</sup>, or where the act of conversion is deliberate and self-seeking or is otherwise attended by aggravating circumstances<sup>9</sup>.

However, special circumstances may exist to increase the claimant's interest in the goods, and these may properly be taken into account<sup>10</sup>. Thus a defendant who converts printed sheets is liable not merely for the cost of printing, but also for the value of the sheets in relation to the value of the volume in which they are to be inserted<sup>11</sup>.

In a claim for the conversion of fixtures, the claimant cannot recover the value of the fixtures in their affixed state, but is entitled to have the value of the articles assessed at a fair price as chattels<sup>12</sup>.

Where goods have been converted at some place other than their destination, their value may be taken as the invoice price together with the freight paid<sup>13</sup>, or as their selling price at the place of destination, less the freight<sup>14</sup>.

The value of a chattel which was converted whilst in an unfinished state is estimated by ascertaining what would have been its value in a complete state at the place where it was converted and deducting the amount which it would have cost to complete it<sup>15</sup>.

In a claim for conversion of an unstamped document, the claimant can, on payment of a penalty and stamp duty, receive the value of the document as if stamped, less the cost of stamping<sup>16</sup>.

1 See PARAS 615-626 ante.

2 *J and E Hall Ltd v Barclay* [1937] 3 All ER 620, CA; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171, CA; *Chubb Cash Ltd v John Crilley & Son* [1983] 2 All ER 294, [1983] 1 WLR 599, CA. See also PARA 616 ante. There may be more than one market: *Charrington & Co Ltd v Woorder* [1914] AC 71, HL; *James Buchanan & Co Ltd v Babco Forwarding and Shipping (UK) Ltd* [1978] AC 141, [1977] 3 All ER 1048, HL, where the export market was preferred to the domestic and dutiable market as the best means of valuation under the Carriage of Goods by Road Act 1965. For recognition of the relevance of an illegal market in goods see *Mouat v Betts Motors Ltd* [1959] AC 71, [1958] 3 All ER 402, PC; *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1966] 1 QB 247 at 268-269, [1965] 1 All ER 163 at 172, CA, per Pearson LJ. Where the converter has destroyed or impaired the evidence by which the claimant might have proved his loss, the converter must be the party to suffer from the resulting uncertainty, and the highest value of which goods of the relevant type are capable will be presumed against him: *Armory v Delamirie* (1722) 1 Stra 505; *Indian Oil Corp v Greenstone Shipping SA (Panama), The Ypatianna* [1988] QB 345, [1987] 3 All ER 893; and see DAMAGES vol 12(1) (Reissue) PARA 1108.

3 *J and E Hall Ltd v Barclay* [1937] 3 All ER 620, CA.

4 *France v Gaudet* (1871) LR 6 QB 199, Ex Ch; *The Arpad* [1934] P 189, CA.

5 *The Arpad* [1934] P 189, CA (Scrutton LJ dissenting), where the rule was assimilated to that in contract (see DAMAGES vol 12(1) (Reissue) PARA 1015), and where *France v Gaudet* (1871) LR 6 QB 199, Ex Ch, was explained by Maugham LJ (see *The Arpad* supra at 235), on the ground that the sub-sale price there was the only evidence of value available. The decision in *The Arpad* supra was approved in *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA. See also *Heskell v Continental Express Ltd* [1950] 1 All ER 1033.

6 *The Arpad* [1934] P 189, CA.

7 *The Arpad* [1934] P 189, CA; *Heskell v Continental Express Ltd* [1950] 1 All ER 1033; *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA.

8 *The Arpad* [1934] P 189, CA, explaining *France v Gaudet* (1871) LR 6 QB 199, Ex Ch.

9 *The Arpad* [1934] P 189, CA, obiter per Maugham LJ (statement of general rule confined to claims in conversion where there exist 'no circumstances of aggravation' and where, though the facts technically disclose a conversion, the real basis of the claim is breach of contract to deliver).

10 See *Caxton Publishing Co Ltd v Sutherland Publishing Co* [1939] AC 178 at 203-204, [1938] 4 All ER 389 at 404-405, HL, per Lord Porter.

11 See *Caxton Publishing Co Ltd v Sutherland Publishing Co* [1939] AC 178, [1938] 4 All ER 389, HL; and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 419. Cf *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294, [1983] 1 WLR 599, CA.

12 *Clarke v Holford* (1848) 2 Car & Kir 540; *McGregor v High* (1870) 21 LT 803. Damages may also be recovered under another form of claim for the severance: see *Clarke v Holford* supra. Cf *HE Dibble Ltd v Moore (West, third party)* [1970] 2 QB 181, [1969] 3 All ER 1465, CA.

13 *Ewbank v Nutting* (1849) 7 CB 797.

14 *Morgan v Powell* (1842) 3 QB 278; *Burmah Trading Corp Ltd v Mirza Mahomed Ally Sherazee and Burmah Co Ltd* (1878) LR 5 Ind App 130, PC.

15 *Reid v Fairbanks* (1853) 13 CB 692. See also PARAS 623-626 ante. Where a coat was delivered to a furrier for alteration and a different inferior coat was delivered back to the bailor, damages in detinue were assessed at the value of the coat at the date of judgment (rather than its value on the date of delivery), together with a sum for loss of the use of the coat during the period until judgment, and repayment of the original fee for performing the work on the basis of a total failure of consideration. No allowance was made for the value of the coat returned, for this never became the property of the plaintiff: *Ridgewell v Clayton* (2 November 1978, unreported), CA.

16 *Scott v Jones* (1813) 4 Taunt 865; *M'Leod v M'Ghie* (1841) 2 Man & G 326. As to stamping on payment of penalties see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(2) (Reissue) PARA 1020.

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### 628. Negotiable instruments, documents and tokens.

For the purpose of assessing damages in conversion, in certain cases the value of a document evidencing a debt or other right will be equated with the value of the debt or right itself<sup>1</sup>. The ordinary measure of damages for the conversion of a negotiable instrument is the face value of the instrument<sup>2</sup>. Where a bill of exchange is converted the converter must normally pay the amount of principal and interest due<sup>3</sup>, and where a cheque is converted the converter is liable for the face value of the cheque<sup>4</sup>, unless the claimant's loss is less than that amount<sup>5</sup>.

The same rule applies to conversion of documents in the nature of negotiable instruments, or quasi-negotiable instruments, such as a bill of lading, share certificate<sup>6</sup> or other document of title to goods<sup>7</sup>. A bank's liability in conversion for wrongfully cashing a written order which is not technically a cheque is probably for the amount payable in the order<sup>8</sup>. Whether the rule applies to such documents as dock or warehouse warrants<sup>9</sup> or to all documents or tokens which evidence a debt or valuable right<sup>10</sup> is undecided.

In principle it seems that if the claimant suffers loss to a greater extent than the value of the document as paper, his additional loss should be recoverable whenever it is within the converter's reasonable contemplation provided that the document or token was one which entitled the owner upon presentation of it to some valuable right<sup>11</sup>; the level of damages may therefore be measured by the value of the right abstracted or extinguished by the converter.

There will be cases where the proper measure of damages is a lesser amount than the nominal value of the document<sup>12</sup>. If a cheque were stopped before payment into his bank by the wrongdoer, damages for its face value would be inappropriate<sup>13</sup>. The measure of damages for the conversion of a deposit note has been held to be the amount representing the cost and trouble of proving title to the deposit without production of the note<sup>14</sup>. Upon conversion of two vehicles by detention of their registration documents thereby impeding the plaintiff's right to deal with the goods, nominal damages were awarded, the plaintiff having failed to establish any actual loss, and for minor inconvenience with regard to the detention of the documents a small amount of damages was awarded<sup>15</sup>. In some cases, the proper measure of damages will be the cost of replacing the document itself<sup>16</sup>.

If trading or credit stamps are lost and there is a likelihood that their owner will suffer loss by payment of their face value on presentation at a later date, the prospective loss may be taken into account in assessing his damages in conversion<sup>17</sup>.

1 See the text and notes 2-7 infra.

2 *Morison v London County and Westminster Bank Ltd* [1914] 3 KB 356 at 365, CA, per Lord Reading CJ; *Lloyds Bank Ltd v EB Savory & Co* [1933] AC 201, HL; *Marquess of Bute v Barclays Bank Ltd* [1955] 1 QB 202, [1954] 2 All ER 365; *Midland Bank Ltd v Eastcheap Dried Fruit Co Ltd* [1961] 2 Lloyd's Rep 251; *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1964] 2 QB 430 at 445-446, [1964] 2 All ER 25 at 33-34 per Roskill J (revisd on other grounds [1966] 1 QB 247, [1965] 1 All ER 163, CA). But if the defendant has used the proceeds of conversion in discharging the claimant's debts to a third person damages may be reduced to that extent: see *AL Underwood Ltd v Bank of Liverpool and Martins* [1924] 1 KB 775 at 794, CA, where Scrutton LJ drew attention to the equitable principle that a person who has paid the debts of another without authority is allowed the advantage of his payments. This case was cited in *B Liggett (Liverpool) Ltd v Barclays Bank Ltd* [1928] 1 KB 48 at 62-64 (an action for money had and received), where Wright J held that the same principle was applicable. See also *Plevin v Henshall* (1833) 10 Bing 24. The principle does not apply in favour of a defendant who has discharged debts due from the claimant to himself out of the amount converted: see PARA 625 note 5 ante. However, it has been held that a defendant who can prove that the claimant has recovered part of the property wrongfully converted is excused: see *Lloyds Bank Ltd v Chartered Bank of India, Australia and China* [1929] 1 KB 40 at 75, CA; cf also at 63, 79.

3 *Mercer v Jones* (1813) 3 Camp 477; *Morison v London County and Westminster Bank Ltd* [1914] 3 KB 356 at 365, CA, per Lord Reading CJ; *Ladbroke & Co v Todd* (1914) 111 LT 43; *House Property Co of London Ltd and Baylis and Durlacher v London County and Westminster Bank Ltd* (1915) 84 LJKB 1846.

4 See the authorities cited in note 2 supra. See also *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 17, CA.

5 *International Factors Ltd v Rodriguez* [1979] QB 351 at 358, [1979] 1 All ER 17 at 21, CA, per Sir David Cairns. See also *Associated Midland Corp Ltd v Bank of New South Wales* (1984) 51 ALR 641; *Australian Guarantee Corp v Comrs of the State Bank of Victoria* [1989] VR 617; *ANZ Banking Group Ltd v Hunter BNZ Finance Ltd* [1991] 2 VR 407.

6 *BBMB Finance Hong Kong Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 686, [1998] 2 BCLC 659, CA, per Mummery LJ, reciting with apparent approval the position accepted as common ground between the parties, that share certificates, being personal chattels, 'can properly be the subject of a claim in conversion for which full damages can be recovered to the extent of the loss, not just nominal damages for the value of the share certificates as pieces of paper. The damages are the value of the shares at the date of conversion.' See also at 699 and at 686 per Hobhouse LJ, citing the Torts (Interference with Goods) Act 1977 s 14 and holding that, while shares themselves cannot be the subject matter of a claim in conversion, the share certificates, as pieces of paper, can be, and the damages recoverable can include the value of the rights to which the documents relate. As to the legal effect on the ownership of share certificates of a pledge or other disposition of the shares see also *MCC Proceeds Inc v Lehman Bros International (Europe)* supra at 688 and 674 per Mummery LJ, and at 703 and at 690-691 per Hobhouse LJ.

7 *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1964] 2 QB 430 at 445-446, [1964] 2 All ER 25 at 33-34 per Roskill J (revised on other grounds [1966] QB 247, [1965] 1 All ER 163, CA); *Ernest Scragg & Sons Ltd v Perseverance Banking and Trust Co Ltd* [1973] 2 Lloyd's Rep 101, CA. See also *Douglas Valley Finance Co Ltd v S Hughes (Hirers) Ltd* [1969] 1 QB 738, [1966] 3 All ER 214, where the loss of special licences for lorries through the wrongful dealing of the defendant was taken into account in assessing the value of lorries. See also *Lee v Trimcliffe Motors* [1983] CLY 3633, County Court.

8 *Bavins Junior and Sims v London and South Western Bank Ltd* [1900] 1 QB 270, CA. Cf *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1964] 2 QB 430 at 446, [1964] 2 All ER 25 at 33-34 per Roskill J; revised on other grounds [1966] 1 QB 247, [1965] 1 All ER 163, CA.

9 *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1964] 2 QB 430 at 445, [1964] 2 All ER 25 at 33 per Roskill J; revised on other grounds [1966] 1 QB 247, [1965] 1 All ER 163, CA.

10 The decision of Roskill J on this point in *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1964] 2 QB 430, [1964] 2 All ER 25, was reversed on other grounds. The case involved credit stamps of substantial exchange value which were lost by the Post Office; on appeal damages based on their transactional value were awarded not in conversion but under the Crown Proceedings Act 1947 s 9 (repealed), which provided a statutory cause of action: see *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1966] 1 QB 247, [1965] 1 All ER 163, CA; and see now the Post Office Act 1969 s 30 (as amended); and POST OFFICE vol 36(2) (Reissue) PARA 87.

11 See the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARAS 90-91. As to the general method of assessing damages see PARAS 615 et seq ante, 630 post.

12 Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARAS 90-91.

13 *International Factors Ltd v Rodriguez* [1979] QB 351 at 358, [1979] 1 All ER 17 at 21, CA, per Sir David Cairns. See also note 5 supra.

14 *Clegg v Baretta* (1887) 56 LT 775, DC.

15 *Bryanston Leasings Ltd v Principality Finance Ltd* [1977] RTR 45.

16 Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 91.

17 *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1966] 1 QB 247, [1965] 1 All ER 163, CA, a case on a special statutory cause of action against the Post Office; it appears that the same principle would apply to a claim in conversion. See also note 10 supra. It seems that where damages are given for a prospective loss some discount must be made to reflect the fact that the loss will not be suffered immediately: see *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* supra at 267 and 171 per Pearson LJ.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/629. Availability of a remedy against a third person.

### **629. Availability of a remedy against a third person.**

It is no defence in proceedings for conversion to show that the claimant might have recovered equivalent damages in respect of the same goods from a third person<sup>1</sup>. Thus if one person converts another's chattel and delivers it to an auctioneer to be sold, the owner may recover damages in conversion from the auctioneer once the sale occurs, and it would be no defence to show that the owner would have had an equal claim against the original converter<sup>2</sup>.

1 *International Factors Ltd v Rodriguez* [1979] QB 351, [1979] 1 All ER 17, CA. A principle similar to that stated in the text applies generally throughout the law of damages: see DAMAGES vol 12(1) (Reissue) PARA 826. As to the position where goods are the subject of two or more claims for wrongful interference see PARA 614 ante. As to double liability of a defendant see PARA 637 post; and as to the position where a third person has a better right to the goods than the claimant see PARAS 638, 644 post. As to joint and several tortfeasors see PARAS 346-354, 602 ante, 648 post.

2 *International Factors Ltd v Rodriguez* [1979] QB 351 at 359, [1979] 1 All ER 17 at 21, CA, per Sir David Cairns. Where a debt was assigned to the plaintiff under a contract which gave him a proprietary interest in and an immediate right of possession to any cheque later sent by the debtor to the creditor in a payment of the debt, and the plaintiff gave notice of the assignment to the debtor, an officer of the creditor who then converted cheques which were mistakenly sent to the creditor by the debtor was liable for their face value notwithstanding that the claimant still had a right of action against the debtor for the debt: *International Factors Ltd v Rodriguez* supra (explained in *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675, [1998] 2 BCLC 659, CA).

### **UPDATE**

### **542-686 Wrongful Interference with Goods**

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/630. Consequential damage.

### **630. Consequential damage.**

Apart from the general value of the goods<sup>1</sup> the claimant may be able to show that he has suffered special damage by their detention or conversion. Such damage, if claimed<sup>2</sup>, and if it is

not too remote a result of the defendant's unlawful acts<sup>3</sup>, is recoverable<sup>4</sup>. As in the assessment of the general value of the goods<sup>5</sup>, recovery in respect of particular value to the claimant may depend, in certain circumstances<sup>6</sup>, on the defendant's knowledge of that particular value<sup>7</sup>. However, this knowledge may be no more than imputed knowledge, and where the defendant has converted the claimant's goods normally used by the claimant in his trade the claimant will recover loss of trade profits<sup>8</sup>.

Questions of knowledge or foresight on the part of the defendant appear irrelevant where the claimant, instead of claiming conventional damages for consequential loss, seeks to recover a reasonable hiring charge for the period over which the defendant has wrongfully detained the goods and used them for his benefit<sup>9</sup>.

1 See PARA 615 et seq ante.

2 *Davis v Oswell* (1837) 7 C & P 804; *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA.

*Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 181, CA, per Ackner LJ; *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184 at 188, [1983] 1 WLR 959 at 963 per Parker J; and cf *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294 at 299, [1983] 1 WLR 599 at 604, CA, per Bush LJ; *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA.

Modern authority holds that the test of remoteness in actions for conversion is akin to that for negligence (see *The Wagon Mound* [1961] AC 388, [1961] 1 All ER 404, PC; and DAMAGES vol 12(1) (Reissue) PARA 851 et seq) and imposes liability for those consequences of the conversion which the defendant should reasonably have anticipated: *Saleslease Ltd v Davis* supra, following *The Arpad* [1934] P 189, CA. See also TORT vol 97 (2010) PARA 516; and DAMAGES vol 12(1) (Reissue) PARAS 852, 858. But such a rule, although clearly appropriate for some forms of conversion (such as that created by the Torts (Interference with Goods) Act 1977 s 2(2): see PARAS 542, 548 ante) is less suitable in other cases, particularly those of intentional or malicious conversion: see *The Arpad* supra at 234 per Maughan LJ; *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 at 279-280, sub nom *Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd* [1996] 4 All ER 769 at 790, HL, per Lord Steyn; but cf *Saleslease Ltd v Davis* supra. In the latter situation, it may be appropriate to apply a rule akin to that adopted in cases of fraud, and to impose on the defendant liability for all the direct consequences of his unlawful acts, whether those consequences were reasonably foreseeable or not: cf *Doyle v Olby (Ironmongers) Ltd* [1969] 2 QB 158, [1969] 2 All ER 119, CA; *Archer v Brown* [1985] QB 401, [1984] 2 All ER 267; *Downs v Chappell* [1996] 3 All ER 344, [1997] 1 WLR 426, CA; *Smith New Court Securities Ltd v Citibank NA* supra at 279-283 and 789-793 per Lord Steyn.

4 *Davis v Oswell* (1837) 7 C & P 804 (where the plaintiff was obliged to hire other horses); *Bodley v Reynolds* (1846) 8 QB 779 (where conversion of the plaintiff's tools prevented him from working at his trade). See also *Douglas Valley Finance Co Ltd v S Hughes (Hirers) Ltd* [1969] 1 QB 738, [1966] 3 All ER 214, where the fall was in the value of converted lorries by separation of their licences; *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA, The Playa Larga and Marble Islands* [1983] 2 Lloyd's Rep 171 at 181, CA, per Ackner LJ, where it was held that the loss of part of a cargo of sugar through warning shots striking the ship when the vessel sailed in defiance of orders from the maritime authority and refused to obey the orders of a warship to return was not too remote a consequence of the original act of conversion by removal for damages to be irrecoverable; *Clarke v Seaman* [1995] CLY 1581, Central London County Court (loss of use of car); cf *Finlayson v Taylor* (1983) 133 NLJ 720, where it was held that the defendant, having wrongfully detained the plaintiff's goods on premises occupied by the defendant, was liable for the value of the goods following the demolition of the premises and the disappearance of the goods; *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1992] 1 WLR 1253. See also DAMAGES vol 12(1) (Reissue) PARAS 863-866, 1145.

5 See *The Arpad* [1934] P 189, CA, explaining *France v Gaudet* (1871) LR 6 QB 199, Ex Ch, on the ground that a sub-sale price was the only evidence of value obtainable there; *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA. See also PARA 627 note 5 ante.

6 For example, where the act of conversion is inadvertent or innocent of any intention to harm the claimant's interests: cf *The Arpad* [1934] P 189 at 231-232, CA, per Maughan LJ. See also note 3 supra.

7 *France v Gaudet* (1871) LR 6 QB 199 at 205, Ex Ch, per Mellor J. See also PARA 627 ante. There may be only nominal damages where the goods have been restored to the claimant and he fails to show that he would have used them before that time: *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA. Cf *Mediana (Owners) v Comet (Owners, Master and Crew), The Mediana* [1900] AC 113 at 117,

HL, per Lord Halsbury LC; *BBMB Finance Hong Kong Ltd v Eda Holdings Ltd* [1991] 2 All ER 129 [1990] 1 WLR 409, PC.

8 *Bodley v Reynolds* (1846) 8 QB 779, where Parke B made no mention of express knowledge on the part of the defendant. But see *France v Gaudet* (1871) LR 6 QB 199 at 205, Ex Ch, per Mellor J; *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA.

9 As to reasonable hiring charge (also known as market rental) see *Strand Electric and Engineering Co Ltd v Brisford Entertainments Ltd* [1952] 2 QB 246 at 254, [1952] 1 All ER 796 at 801, CA (a case of detinue, where Denning LJ held that a plaintiff might recover a reasonable hiring charge even though, because he would not have used the goods, he had suffered no loss); *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184, [1983] 1 WLR 959 (where an equivalent rule was held to apply to actions in conversion); *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195 at 201, [1992] 1 WLR 1253; and DAMAGES vol 12(1) (Reissue) PARAS 1096-1098.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/631. Claimant suing as bailee or bailor.

### 631. Claimant suing as bailee or bailor.

Where the claimant is a bailee and the defendant is a mere stranger, the measure of damages recoverable by the bailee (in the absence of a plea of *jus tertii*<sup>1</sup>) is the entire value of the goods, even though in the particular circumstances of the case the bailee would not be responsible to the bailor for the loss of the goods<sup>2</sup>. If the bailee recovers more than represents his own interest in the thing bailed, he holds the surplus for the account of the bailor<sup>3</sup>. Recovery of the full value of goods by either a bailor or a bailee from a stranger precludes any subsequent claim by the other<sup>4</sup>. Where the claimant is a bailor, and the defendant is the bailee<sup>5</sup>, the measure of damages is not necessarily the full value of the chattel, but may be the value of the claimant's interest in it<sup>6</sup> where that is lower than the value of the chattel<sup>7</sup>. The same principle applies where the defendant is not himself the original bailee, but a third person deriving title from the original bailee<sup>8</sup>.

1 As to *jus tertii* see the Torts (Interference with Goods) Act 1977 s 8; and PARAS 638, 644 post.

2 *Waters and Steel v Monarch Fire and Life Assurance Co* (1856) 25 LJQB 102; *The Winkfield* [1902] P 42, CA (overruling *Claridge v South Staffordshire Tramway Co* [1892] 1 QB 422, DC); *Glenwood Lumber Co Ltd v Phillips* [1904] AC 405 at 410-411, PC; *Eastern Construction Co Ltd v National Trust Co Ltd and Schmidt* [1914] AC 197 at 210, PC; *Midland Bank Ltd v Eastcheap Dried Fruit Co Ltd* [1962] 1 Lloyd's Rep 359, CA; *Hepburn v A Tomlinson (Hauliers) Ltd* [1966] AC 451 at 468, [1966] 1 All ER 418 at 422, HL, per Lord Reid; *Albacruz (Cargo Owners) v Albazero (Owners), The Albazero* [1977] AC 774 at 846, [1976] 3 All ER 129 at 136, HL, per Lord Diplock; *Ellerman Lines Ltd v Lancaster Maritime Co Ltd, The Lancaster* [1980] 2 Lloyd's Rep 497 at 502-503 per Robert Goff J; *Petrofina (UK) Ltd v Magnaload Ltd* [1984] QB 127 at 135, [1983] 3 All ER 35 at 41 per Lloyd J; *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC; *O'Sullivan v Williams* [1992] 3 All ER 385, [1992] RTR 402, CA. See also *Webb v Ireland and A-G* [1988] IR 353, Ir SC; *Spartan Steel and Alloys Ltd v Martin & Co (Contractors) Ltd* [1973] QB 27 at 36, [1972] 3 All ER 557 at 562, CA, per Lord Denning MR. See also BAILMENT vol 3(1) (2005 Reissue) PARA 86. A principle similar to that stated in the text applies in favour of possessors other than conventional bailees (for example, finders, or even those

unlawfully in possession) during whose possession an unauthorised act is committed by a person other than the owner: see PARA 568 ante. The right of the person in possession of a chattel (who lacks residual ownership) to damages assessed by reference to the full value of the chattel applies also to a person who has a mere immediate right to the possession of the chattel at the time of the wrong: *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* supra.

3 *The Winkfield* [1902] P 42 at 61, CA, per Collins MR. See also the cases cited in note 2 supra; and BAILMENT vol 3(1) (2005 Reissue) PARA 90.

4 *The Winkfield* [1902] P 42 at 61, CA, per Collins MR; *O' Sullivan v Williams* [1992] 3 All ER 385, [1992] RTR 402, CA.

5 As to conversion by bailees see PARAS 605-607 ante.

6 *Brierly v Kendall* (1852) 17 QB 937; *Toms v Wilson* (1863) 4 B & S 455, Ex Ch; *Belsize Motor Supply Co v Cox* [1914] 1 KB 244 at 250 per Channell J, in argument. Cf *Johnson (Assignee of Cumming) v Stear* (1863) 15 CBNS 330.

7 *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294, [1983] 1 WLR 599, CA. See also note 8 infra.

8 *Belsize Motor Supply Co v Cox* [1914] 1 KB 244; *Whiteley v Hilt* [1918] 2 KB 808, CA; *Wickham Holdings Ltd v Brooke House Motors Ltd* [1967] 1 All ER 117, [1967] 1 WLR 295, CA (disapproving *United Dominions Trust (Commercial) Ltd v Parkway Motors Ltd* [1955] 2 All ER 557, [1955] 1 WLR 719). It is now apparent that the fact that a hire purchase agreement prohibits an assignment of the benefit of the agreement to the defendant does not prevent him from claiming that his damages should be merely the amount of the bailor's interest: *Wickham Holdings Ltd v Brooke House Motors Ltd* supra at 120 and 300 per Lord Denning MR. See also *Belvoir Finance Co Ltd v Stapleton* [1971] 1 QB 210, [1970] 3 All ER 664, CA; cf *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294, [1983] 1 WLR 599, CA, an action against bailiffs for the conversion of goods which the plaintiff had leased on hire purchase to a debtor, where the amount outstanding under the hire purchase agreement exceeded the market value of the goods, and it was held that the plaintiff could recover only their market value. See also *Millar v Candy* (1981) 58 FLR 145, Aust HC; *Chabba Corp Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC. See further CONSUMER CREDIT vol 9(1) (Reissue) PARAS 30-39; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 38.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/632. Buyer on unexpired credit.

### 632. Buyer on unexpired credit.

Where the property in goods sold on unexpired credit has passed to the buyer and the seller converts them to his own use by resale, the measure of damages is the difference between the contract price and the market price at the date of conversion<sup>1</sup>. However, in a claim against a stranger the buyer, who is liable to the seller for the price, is entitled to recover from the stranger the whole value of the goods<sup>2</sup>, where that stranger does not enter a plea of *jus tertii*<sup>3</sup>.

1 *Chinery v Viall* (1860) 5 H & N 288. However, if goods have been delivered to a buyer, and the unpaid seller seizes them and the buyer sues in trespass, the buyer is entitled to the full value of the goods. The reason

is said to be that, notwithstanding the retaking of the goods, the buyer would still remain liable for the price: *Gillard v Brittan* (1841) 8 M & W 575. This would now be the subject of a counterclaim by the seller against the buyer: see CIVIL PROCEDURE vol 11 (2009) PARA 634 et seq.

2 *Turner v Hardcastle* (1862) 11 CBNS 683; *Johnson v Lancashire and Yorkshire Rly Co and Wigan Waggon Co Ltd* (1878) 3 CPD 499. As to the time at which the value of the goods is assessed see PARA 618 ante.

3 See PARA 644 post.

## **UPDATE**

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### **633. Claimant with limited interest.**

If a person with a limited interest in goods sues the owner in conversion, for instance if a mortgagor sues a mortgagee for a premature seizure, the measure of damages is the value of the claimant's interest<sup>1</sup>, although if such a person were suing a wrongdoer, he would at common law be entitled by virtue of his possessory interest to recover the whole value of the goods, irrespective of his personal loss or of any personal liability over to the bailor<sup>2</sup>.

1 *Brierly v Kendall* (1852) 17 QB 937; *Turner v Hardcastle* (1862) 11 CBNS 683 at 708-709 per Erle CJ; *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 685-686, [1998] 2 BCLC 659 at 671-672, CA, per Mummery LJ. See also MORTGAGE vol 77 (2010) PARAS 399, 406.

2 See PARA 631 ante. See also *Turner v Hardcastle* (1862) 11 CBNS 683; cf *Great Western Rly Co v Gurton* (1858) 1 F & F 359, where the payment of money on demand by plaintiffs as bailees of goods to the owner was held to be admissible evidence of damages sustained in an action against persons to whom the plaintiffs had entrusted the goods for conveyance.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

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### **634. Interest.**

Simple interest may be allowed in a claim in conversion in addition to the value of the goods at the time of the conversion<sup>1</sup> if the court thinks fit<sup>2</sup>.

1 Ie the date at which the cause of action arises: see further PARA 615 et seq ante.

2 See the Supreme Court Act 1981 s 35A (added by the Administration of Justice Act 1982 s 15(1), Sch 1 Pt I); the County Courts Act 1984 s 69 (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 46). See also the County Courts Act 1984 s 74; TORT vol 97 (2010) PARA 470; and CIVIL PROCEDURE; COURTS; DAMAGES vol 12(1) (Reissue) PARA 848; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1307.

### **UPDATE**

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For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### **634 Interest**

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/635. Nominal damages.

### **635. Nominal damages.**

In certain cases a claimant in conversion will be entitled only to nominal damages<sup>1</sup>. Such damages will be awarded both where the claimant suffers no loss<sup>2</sup>, and where such loss as the claimant does suffer is too remote a consequence of the conversion to be recoverable<sup>3</sup>. While damages for conversion of title deeds are assessed at the whole value of the estate to which the deeds relate<sup>4</sup>, they are reducible to a nominal amount on return of the deeds. This rule applies to the return after proceedings brought of any goods detained by the defendant, unless the claimant has by their detention suffered some special damage<sup>5</sup>. Where the defendant's conduct has amounted only to a delivery to a third person of goods held on behalf of the claimant in anticipation of his being ordered to make such a delivery by the claimant, and such an order is subsequently given, the claimant cannot recover more than nominal damages<sup>6</sup>. The claimant's true interest in the goods may also show that he is not entitled to substantial damages for their detention<sup>7</sup>.

Since the award of costs in any proceedings is, subject to the express provisions of any statute or rules of court<sup>8</sup>, in the discretion of the court or judge<sup>9</sup>, an award of nominal damages in a claim in conversion may be a ground for depriving the claimant of some or all of his costs, or for ordering him to pay some or all of the defendant's costs<sup>10</sup>.

1 As to nominal damages see DAMAGES vol 12(1) (Reissue) PARA 813.

2 As to whether loss has been suffered see *Obestain Inc v National Mineral Development Corp Ltd, The Sanix Ace* [1987] 1 Lloyd's Rep 465 (where a claim in respect of tortious wrong to goods is based on impairment of claimant's ownership or possession or possessory title, third party contracts concluded by the owner before the tort, which have the effect of avoiding or redistributing the loss caused by the tort, are to be disregarded in assessing the claimant's damages).

3 See eg *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA.

4 *Coombe v Sansom* (1822) 1 Dow & Ry KB 201; *Loosemore v Radford* (1842) 9 M & W 657 at 659 per Alderson B.

5 *Clendon v Dinneford* (1831) 5 C & P 13; *Moon v Raphael* (1835) 2 Bing NC 310; *Cook v Hartle* (1838) 8 C & P 568; *Crossfield v Such* (1852) 8 Exch 159; *Edmondson v Nuttall* (1864) 17 CBNS 280 at 294; *Bryanston Leasings Ltd v Principality Finance Ltd* [1977] RTR 45; *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA; *Saleslease Ltd v Davis* [1999] 1 WLR 1664, CA. But cf *Mediana (Owners v Comet (Owners, Master and Crew), The Mediana* [1900] AC 113 at 117, HL, per Lord Halsbury LC. So, too, if shares have been converted but similar shares restored to the claimant, the value of those shares at the time when they were received must be deducted from the value of the converted shares: *Solloway v McLaughlin* [1938] AC 247, [1937] 4 All ER 328, PC; *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; cf *Ridgewell v Clayton* (2 November 1978, unreported), CA; and PARA 627 note 15 ante.

6 *Hiort v London and North Western Rly Co* (1879) 4 ExD 188, CA.

7 *Wills v Wells* (1818) 2 Moore CP 247; *Cameron v Wynch* (1846) 2 Car & Kir 264; *O'Sullivan v Williams* [1992] 3 All ER 385, [1992] RTR 402, CA (bailee by way of gratuitous loan held unable to recover damages from third party tortfeasor where bailor had already recovered full damages). As to the interest of a bailee as claimant where there has been no prior claim by the bailor see PARA 631 ante.

8 As to the award of costs where claims are begun in the High Court which could have been commenced in the county court see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

9 See CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

10 See CIVIL PROCEDURE. For examples of orders for costs made where nominal damages were awarded see *Bryanston Leasings Ltd v Principality Finance Ltd* [1977] RTR 45; *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/636. Successive conversions.

### 636. Successive conversions.

Where goods have been the subject of successive conversions<sup>1</sup> each person dealing with them is liable in full for the conversion committed by him<sup>2</sup>. However, if the owner receives full satisfaction in a claim against one defendant the property in the goods vests in that defendant<sup>3</sup>. The owner will therefore be precluded from recovering judgment against any other defendant<sup>4</sup>. Mere recovery of judgment without satisfaction does not affect the property in the goods<sup>5</sup>, but bars a claim against another defendant<sup>6</sup>.

1 As to successive conversions see PARA 548 text and note 8 ante.

2 *Morris v Robinson* (1824) 3 B & C 196; *Brinsmead v Harrison* (1871) LR 6 CP 584 (affd (1872) LR 7 CP 547, Ex Ch). Cf TORT vol 97 (2010) PARA 448.

3 See PARA 655 post. See also *Brinsmead v Harrison* (1872) LR 7 CP 547 at 554, Ex Ch, per Blackburn J.

4 *Cooper v Shepherd* (1846) 3 CB 266.

5 *Brinsmead v Harrison* (1871) LR 6 CP 584; affd (1872) LR 7 CP 547, Ex Ch. See also the Torts (Interference with Goods) Act 1977 s 5(1)(a), (b) (which applies where the defendant was paid the assessed damages, or there has been a settlement of the claim for damages, and those damages either fell or (as the case may be) would have fallen to be assessed on the footing that the claimant is being compensated for the whole of his interest in the goods, or for the whole of his interest in the goods subject to a reduction for contributory negligence); and PARAS 655, 684 post. As to partial satisfaction see also *Morris v Robinson* (1824) 3 B & C 196 at 206 per Holroyd J. See PARA 637 post.

6 *Brinsmead v Harrison* (1872) LR 7 CP 547, Ex Ch.

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/637. Liability to two or more claimants.

### 637. Liability to two or more claimants.

In proceedings to which any two or more claimants are parties, the relief must be such as to avoid double liability of the wrongdoer as between those claimants<sup>1</sup>. 'Double liability' means the double liability of a wrongdoer which can arise:

- 8 (1) where one of the two or more rights of action for wrongful interference is founded on a possessory title<sup>2</sup>; or
- 9 (2) where the measure of damages in a claim for wrongful interference founded on a proprietary title is, or includes, the entire value of the goods, even though the interest is one of two or more interests in the goods<sup>3</sup>.

On satisfaction, in whole or in part, of any claim for an amount exceeding that recoverable if the rule against double liability applies, the claimant is liable to account over to the other person having a right to claim to such extent as will avoid double liability<sup>4</sup>.

Where, as the result of the enforcement of a double liability, any claimant is unjustly enriched to any extent, he is liable to reimburse the wrongdoer to that extent<sup>5</sup>. For example, if a converter of goods pays damages first to a finder of the goods, and then to the true owner, the finder is unjustly enriched unless he accounts over to the true owner<sup>6</sup>; and then the true owner is unjustly enriched and becomes liable to reimburse the converter of the goods<sup>7</sup>.

1 See the Torts (Interference with Goods) Act 1977 s 7(2); and PARA 644 post. As to the position prior to the commencement of the Act see *Morris v Robinson* (1824) 3 B & C 196 at 205-206 per Bayley J. As to successive conversions see PARA 636 ante. See generally on double liability Palmer *Bailment* (2nd Edn, 1991) pp 286-287, 356-362; Hudson 'Money Claims for Misuse of Chattels' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) pp 854-856.

2 Torts (Interference with Goods) Act 1977 s 7(1)(a). An example of such a right of action is the possessory title of a finder: see PARA 568 ante.

3 *Ibid* s 7(1)(b). An example of such a limited interest in goods is that of a mortgagee: see PARA 633 ante.

4 *Ibid* s 7(3). As to the extinction of the other person's title in certain circumstances see PARA 655 post.

5 *Ibid* s 7(4).

6 *Ie* under *ibid* s 7(3): see the text and note 4 supra.

7 *Ibid* s 7(4).

## UPDATE

### 542-686 Wrongful Interference with Goods

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/638. Better title of third person.

### 638. Better title of third person.

The rules against double liability<sup>1</sup> complement provisions which enable a defendant in proceedings for conversion to show that a third person has a better right than the claimant to all or any part of the interest which is claimed by the claimant<sup>2</sup>. The third person may be identified and joined in the proceedings, and in certain circumstances, such as failure to appear on the hearing, may be deprived of his interest<sup>3</sup>. The rules against double liability thus serve two main purposes. First they enable the court, where the third person defends, to settle the respective interests of possible claimants without a need for further proceedings<sup>4</sup>, secondly, where the third person does not defend because the defendant is unable to identify him or he omits to invoke the provisions as to third party rights, they ensure that if a later claim is brought<sup>5</sup> no claimant is unjustly enriched at the expense of the wrongdoer<sup>6</sup>.

1 As to the rules against double liability see PARA 637 ante.

2 See the Torts (Interference with Goods) Act 1977 s 8(1); and PARA 644 post.

3 See PARA 644 post.

4 *Ie* by the operation of the Torts (Interference with Goods) Act 1977 s 7(2): see PARA 637 ante.

5 *Ie* in one of the situations postulated in *ibid* s 7(1): see PARA 637 ante.

6 le by the operation of *ibid* s 7(4): see PARA 637 ante.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(g) Measure of Damages/639. Contributory negligence.

### **639. Contributory negligence.**

Generally, contributory negligence is no good defence in proceedings founded on conversion<sup>1</sup>. Therefore, if an owner fails to take care to safeguard his goods with the result that they are innocently converted, or are stolen and later innocently converted by another, his damages against the converter will not be reduced in proportion to his lack of care<sup>2</sup>.

1 Torts (Interference with Goods) Act 1977 s 11(1). The rule stated in the text appears, on a literal analysis, to apply even to a claim for conversion against a bailee under s 2(2) (see PARA 548 text and notes 13, 14 ante), although this may not be the case in other jurisdictions: see *Bowden v Lo* (1998) 72 ALJ 598, NSW SC, Eq Div, where contributory negligence was held to be available as defence to an action against a bailee for loss of goods. However, the defence of contributory negligence is available to a bank in any circumstances in which proof of absence of negligence on its part would be a defence in proceedings by reason of the Cheques Act 1957 s 4 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 882, 884): see the Banking Act 1979 s 47. As to contributory negligence generally see NEGLIGENCE vol 78 (2010) PARA 75 et seq. For decisions prior to the commencement of the statutory rule see eg *Central Newbury Car Auctions Ltd v Unity Finance Ltd* [1957] 1 QB 371, [1956] 3 All ER 905, CA; *Ingram v Little* [1961] 1 QB 31 at 74, [1960] 3 All ER 332 at 351-352, CA, per Devlin LJ; *J Sargent (Garages) Ltd v Motor Auctions (West Bromwich) Ltd* [1977] RTR 121, CA; *Moorgate Mercantile Co Ltd v Twitchings* [1977] AC 890, [1976] 2 All ER 641, HL. See also *Cadogan Finance Ltd v Lavery and Fox* (1982) 132 NLJ 1101. Contributory negligence is also no defence in proceedings founded on intentional trespass to goods: Torts (Interference with Goods) Act 1977 s 11(1). See generally the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARAS 79-82.

2 However, the owner's negligence may give rise to an estoppel if it amounts to a breach of a duty of care owed to the converter: see PARA 645 post; and ESTOPPEL vol 16(2) (Reissue) PARA 1061. See also *Moorgate Mercantile Co Ltd v Twitchings* [1977] AC 890, [1976] 2 All ER 641, HL; *J Sargent (Garages) Ltd v Motor Auctions (West Bromwich) Ltd* [1977] RTR 121, CA; *Beverley Acceptances Ltd v Oakley* [1982] RTR 417, CA; *Cadogan Finance Ltd v Lavery and Fox* (1982) 132 NLJ 1101. If the owner sues a person for negligence in relation to his goods he may have his damages reduced for contributory negligence: cf *Batistoni v Dance* (1908) Times, 18 January; *Elvin and Powell Ltd v Plummer Roddis Ltd* (1933) 50 TLR 158 (involuntary bailees).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(h) Waiver of Tort/640. Waiver.

### **(h) Waiver of Tort**

## **UPDATE**

## 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 640. Waiver.

If a person's goods have been converted or detained and are sold by the wrongdoer, the owner may waive the tort<sup>1</sup> and sue for money had and received<sup>2</sup>, but if he does so and recovers under judgment<sup>3</sup>, he may not subsequently sue in conversion<sup>4</sup>. If the owner sues in conversion and judgment is given against him, the judgment is a bar to an action for money had and received in respect of the same goods<sup>5</sup>.

If the master of a ship wrongfully sells a cargo and the owner of the cargo sues the shipowner in conversion and recovers the value of the ship and freight which represents only a part of the value of the cargo, the owner of the cargo is not precluded from suing the purchasers for the residue<sup>6</sup>.

If a person converts the goods of a bankrupt and the trustee in bankruptcy demands payment from that person as upon a sale by the bankrupt, the trustee is not precluded from suing when payment is refused<sup>7</sup>.

A claimant whose business is the hiring out of goods of the type wrongfully converted can recover as damages a reasonable hiring charge<sup>8</sup>. In exceptional cases, a claimant may waive the tort of conversion and recover something other than money enjoyed by the defendant<sup>9</sup>.

1 The expression 'waiver of tort', in this context, is misleading. The tort is not extinguished. The claimant pleads an alternative claim for damages with an election to take judgment on the basis of tort or restitution. This does not involve the waiver of the tort. It refers to the reliance on the tort to recover restitutionary damages. The tort remains the foundation of the action.

Conversion is not the only tort which may be waived; the earliest cases of waiver concerned the recovery of fees received by the usurper of an office. See, for example, *Howard v Wood* (1669) 2 Lev 245. The torts of trespass to land or goods, deceit and a claim for extorting money by threats are among the torts which can be waived, but the torts of defamation and assault are not: *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1 at 12-13, [1940] 4 All ER 20 at 26, HL, per Viscount Simon LC.

2 *Lamine v Dorrell* (1701) 2 Ld Raym 1216, where debentures fraudulently obtained by the defendant were sold, and an action lay for the proceeds; *Comité des Assureurs Maritimes v Standard Bank of South Africa* (1883) Cab & El 87, where the proceeds of sale of goods were followed into the hands of a bank and bills of exchange were received by a wrongdoer to the amount of the proceeds, and they were held to be the property of the owner; *Chesworth v Farrar* [1967] 1 QB 407, [1966] 2 All ER 107, where, on a sale of furniture, an action lay for money had and received and, being analogous to a contractual action, was within the limitation period. As to actions for money had and received see RESTITUTION vol 40(1) (2007 Reissue) PARA 5. As to waiver of tort see PARA 646 and TORT vol 97 (2010) PARA 484; and RESTITUTION vol 40(1) (2007 Reissue) PARA 161 et seq.

3 It is recovery under judgment and not the mere bringing of the action that constitutes the bar: *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1, [1940] 4 All ER 20, HL. See also *Rice v Reed* [1900] 1 QB 54 at 67, CA, per Vaughan Williams LJ.

4 *Brewer and Gregory v Sparrow* (1827) 7 B & C 310, where assignees in bankruptcy accepted the balance of an account from the seller of the bankrupt's goods; *Smith v Baker* (1873) LR 8 CP 350, where a trustee waived the tort by bringing proceedings in bankruptcy to recover proceeds of sale. See also *Verschures Creameries Ltd v Hull and Netherlands Steamship Co Ltd* [1921] 2 KB 608, CA, where the price of goods had been recovered from a buyer, and no action lay against the seller's agent for misdelivery; *MB Pyramid Sound NV v Briese Schiffahrts GmbH and Co KG MS 'Sina' and Latvian Shipping Association Ltd, The Ines* [1995] 2 Lloyd's Rep 144, where the plaintiff's claim against the buyer on a different and inconsistent basis to that asserted against the carriers did not amount to waiver, election or ratification on which the carriers could rely. See also PARA 646 post.

5 *Hitchen (or Kitchen) v Campbell* (1772) 2 Wm Bl 827.

6 *Morris v Robinson* (1824) 3 B & C 196: see CARRIAGE AND CARRIERS vol 7 (2008) PARA 513. As to the rights of the master of a ship over the cargo see CARRIAGE AND CARRIERS vol 7 (2008) PARA 479 et seq.

7 *Valpy v Sanders* (1848) 5 CB 886. As to this common law doctrine of election see further ESTOPPEL vol 16(2) (Reissue) PARA 962.

8 *Strand Electric and Engineering Co Ltd v Brisford Entertainments Ltd* [1952] 2 QB 246 at 254-255, CA, per Denning LJ. See also *Penarth Dock Engineering Co Ltd v Pound* [1963] 1 Lloyd's Rep 359, CA, at 361-362 per Lord Denning MR; *Inverugie Investments Ltd v Hackett* [1995] 3 All ER 841, [1995] 1 WLR 713.

9 *Sir Robert McAlpine & Sons Ltd v Minimax Ltd* [1970] 1 Lloyd's Rep 397, where there was a bailment of fire extinguishers, which had failed to function on the plaintiffs' premises, to the defendants to enable them to compile a report; the defendants lost the extinguishers having made the report and it was held, in an action for detinue, that the report was equivalent to money had and received, and delivery up of it was ordered in favour of the claimants. As to the former action of detinue and its abolition see PARA 542 ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(h) Waiver of Tort/641. Effect of acceptance of part of proceeds.

#### 641. Effect of acceptance of part of proceeds.

Acceptance by the owner of goods converted of part of the proceeds of the goods in full discharge of his claim is a waiver of tort<sup>1</sup>; but where the proceeds are received but not accepted in full discharge, the owner may still sue for the original wrong<sup>2</sup>. Where a lost bank note is converted by the finder to his own use, acceptance by the owner of part of the proceeds is not a waiver, and the owner may sue in conversion for the value of the note, the amount accepted going in reduction of damages<sup>3</sup>.

If goods are converted by two persons and the owner accepts a sum of money, part of the proceeds of the conversion, from one of the wrongdoers without prejudice to his claim against the other, this is not a waiver of the tort as against the other wrongdoer, and does not preclude the owner from suing him<sup>4</sup>.

1 *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1 at 43, [1940] 4 All ER 20 at 46, HL. See also *Wilson v Poulter* (1730) 2 Stra 859; *Lythgoe v Vernon* (1860) 5 H & N 180; *Brewer and Gregory v Sparrow* (1927) 7 B & C 310.

2 *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1 at 43, [1940] 4 All ER 20 at 46, HL.

3 *Burn v Morris* (1834) 4 Tyr 485, distinguishing *Brewer and Gregory v Sparrow* (1827) 7 B & C 310.

4 *Rice v Reed* [1900] 1 QB 54, CA. Damages to the full value of goods which have been converted may be awarded against different persons for successive conversions of goods, but a claimant cannot recover in aggregate from one or more defendants an amount in excess of his loss; part satisfaction of a judgment

operates to reduce the amount recoverable in a successive claim against another wrongdoer: *Tang Man Sit v Capacious Investments Ltd* [1996] AC 514, [1996] 1 All ER 193, PC.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/642. Available defences.

*(i) Defences*

**UPDATE**

**542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

**642. Available defences.**

The defendant may show<sup>1</sup> that the goods have not been in his possession<sup>2</sup>, but it is not enough to show that he has improperly parted with possession of them<sup>3</sup>. He may show that he took them lawfully under a distress<sup>4</sup>, or under an execution<sup>5</sup>, or with the leave and licence of the claimant<sup>6</sup>, or that he is entitled as against the claimant to a lien on the goods<sup>7</sup>, or to retain the goods as mortgagee<sup>8</sup>, or pledgee<sup>9</sup>, or owner or part owner<sup>10</sup>, or as a person with a right to their possession<sup>11</sup>. If a wrongdoer incurs expense, for instance by paying freight, in order to obtain possession of goods, he cannot insist on the owner's liability to tender these expenses as a defence in an action in conversion<sup>12</sup>.

1 For the rules of pleading see CIVIL PROCEDURE. Since the enactment of the CPR, pleadings are now known as statements of case: see CIVIL PROCEDURE.

2 It should be noted that a defendant may be liable in conversion without having been in possession of the goods: see PARA 553 ante.

3 *Jones v Dowle* (1841) 9 M & W 19. See also PARA 542 ante.

4 As to distress see DISTRESS.

5 As to execution see CIVIL PROCEDURE vol 12 (2009) PARA 1265 et seq.

6 *Unwin v St Quintin* (1843) 11 M & W 277; *Whitmore v Greene* (1844) 13 M & W 104; *Morgan v Marquis* (1853) 9 Exch 145; *Anderson v Smith* (1860) 29 LJ Ex 460. See also *Maynegrain Pty Ltd v Compafina Bank* (1984) 58 ALJR 389, PC (consent imputed through doctrine of undisclosed principal, sed quaere); and see PARA 552 note 6 ante. See also PARA 681 post.

7 *Green v Farmer* (1768) 4 Burr 2214 at 2218; *Lempriere v Pasley* (1788) 2 Term Rep 485; *Anderson v Passman* (1835) 7 C & P 193; *Owen v Knight* (1837) 4 Bing NC 54; *Barnett v Branda* (1843) 6 Man & G 630, Ex Ch; *Binns v Pigot* (1840) 9 C & P 208; *Barnewall v Williams* (1844) 7 Man & G 403; *Broadwood v Granara* (1854) 10 Exch 417. As to loss of lien see PARA 605 ante. As to lien generally see LIEN.

8 See PARA 571 ante.

9 See PARA 572 ante.

10 See PARA 604 ante.

11 *Jones v Davies* (1851) 6 Exch 663. If a defendant who has taken goods out of pawn on being asked by the owner to deliver the goods says that he has not got them and refuses to say who has them, he cannot afterwards raise the defence that he has a right to insist on a tender of the money which he had advanced to take the goods out of pawn; a defendant can only insist on a tender of money due when on the tender being made the owner could obtain possession of the goods: *Jones v Cliff* (1833) 1 Cr & M 540.

12 *Lempriere v Pasley* (1788) 2 Term Rep 485. As to giving evidence of such expenses in mitigation of damage see PARA 625 ante.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/643. Lien.

### **643. Lien.**

Where the defendant to a claim for the recovery of specific property does not dispute the claimant's title but sets up a right of lien, the court may grant an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if he does so, the property must be given up to him<sup>1</sup>.

1 See CPR 25.1(1)(m); and cf LIEN vol 68 (2008) PARA 847. As to the CPR see CIVIL PROCEDURE.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/644. Jus tertii.

### **644. Jus tertii.**

The defendant in an action for conversion<sup>1</sup> is entitled to show that a third person has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff, or in right of which he sues<sup>2</sup>.

These provisions<sup>3</sup> abolish the rule that if the plaintiff was in possession of goods at the time of the act complained of, the defendant could not set up as a defence a title in some third person under whom he did not claim<sup>4</sup>. The same provisions appear to abolish also the principle that a bailee is estopped from denying his bailor's title<sup>5</sup>, although the estoppel may be preserved where the bailor sues otherwise than in tort. It is uncertain, however, whether these statutory provisions are now the only mechanism by which the defendant in proceedings for conversion (or other wrongful interference with goods) can defend on the ground of a superior right in a third party, or whether the methods recognised by common law<sup>6</sup> remain applicable<sup>7</sup>.

1 This provision also applies to other proceedings for wrongful interference, ie trespass to goods, negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 ss 1 (as amended), 8(1). For the meaning of 'wrongful interference' see PARA 545 text and notes 2-5 ante. As to proceedings for wrongful interference see PARA 545 note 5 ante. For the meaning of 'goods' see PARA 545 text to note 6 ante. As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 ante.

2 Ibid s 8(1), which also states that any rule of law to the contrary (sometimes called *jus tertii*) is abolished. Since the enactment of the CPR, plaintiffs are now known as claimants: see CIVIL PROCEDURE.

It seems that the procedure will be similar to that under the former rules of court, despite the fact that RSC Ord 15 r 10A has not been preserved in the CPR. At the date at which this volume states the law, it is anticipated that there will be an amendment to the CPR or a practice direction which will clarify the position. As to the CPR see PARA 628 note 2 ante; and CIVIL PROCEDURE.

Power to make rules is conferred by the Torts (Interference with Goods) Act 1977 s 8(2). Rules of court relating to proceedings for wrongful interference may: (1) require the plaintiff to give particulars of his title; (2) require the plaintiff to identify any person who, to his knowledge, has or claims any interest in the goods; (3) authorise the defendant to apply for directions as to whether any person should be joined with a view to establishing whether he has a better right than the plaintiff, or has a claim as a result of which the defendant might be doubly liable; (4) where a party fails to appear on an application within head (3), or to comply with any direction given by the court on such an application, authorise the court to deprive him of any right of action against the defendant for the wrong either unconditionally, or subject to such terms or conditions as may be specified: s 8(2). This power is without prejudice to any other power of making rules of court: s 8(3).

3 Ie the provisions of *ibid* s 8(1): see note 2 supra.

4 *Newnham v Stevenson* (1851) 10 CB 713; *Jeffries v Great Western Rly Co* (1856) 5 E & B 802; *Haggan v Pasley* (1878) 2 LR Ir 573; *Barker v Furlong* [1891] 2 Ch 172; *Glenwood Lumber Co Ltd v Phillips* [1904] AC 405 at 410, PC; *de Franco v Metropolitan Police Comr* (1987) Times, 8 May, CA. See also *Ellerman Lines Ltd v Lancaster Maritime Co Ltd*, *The Lancaster* [1980] 2 Lloyd's Rep 497 at 503 per Robert Goff J. The effect of the former principle was that if a plaintiff in possession sued in conversion, he could recover the full amount of the value of the goods even though he was not the owner and was not personally damaged, or personally liable to the owner, to that extent. If the plaintiff was not in possession at the material time, the defendant (unless he was the plaintiff's bailee) was entitled put the plaintiff to proof of the right in respect of which he sued and to set up the right of a third person: *Butler v Hobson* (1838) 4 Bing NC 290; *Leake v Loveday* (1842) 4 Man & G 972; *Gadsden v Barrow* (1854) 9 Exch 514. See also *Chabba Corp v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC; and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 832.

5 As to the principle that a bailee is estopped from denying his bailor's title see BAILMENT vol 3(1) (2005 Reissue) PARA 82; ESTOPPEL vol 16(2) (Reissue) PARA 1044. See also *China Pacific SA v Food Corp of India* [1982] AC 939 at 959, [1981] 3 All ER 688 at 694, HL, per Lord Diplock; *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435 at 438, CA, per Kerr LJ, and at 440 per Stephenson LJ.

6 See BAILMENT vol 3(1) (2005 Reissue) PARA 82.

7 *de Franco v Metropolitan Police Comr* (1987) Times, 8 May, CA, where the question was left open.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain

persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/645. Estoppel.

#### **645. Estoppel.**

The claimant in a claim for conversion may be estopped by his conduct from setting up his title to the goods<sup>1</sup>. Thus, if the owner of goods by his words or conduct allows another to represent the goods as his own and thereby induces a third person to buy them in good faith, the owner cannot recover them from the buyer<sup>2</sup>. If the owner of goods is guilty of negligence which is the proximate cause of the wrongful delivery of the goods to an innocent person and that person is thereby induced to deal with the goods, the owner is estopped from setting up his title to the goods as against that person or those claiming under him<sup>3</sup>.

If the owner of goods affirms the taking possession of them by the defendant, for instance where the defendant innocently takes possession of the goods and sells them in good faith and delivers an account of the sale and pays the balance after deducting expenses to the owner and the balance is accepted, the owner cannot treat the seller as a wrongdoer<sup>4</sup>.

1 See ESTOPPEL vol 16(2) (Reissue) PARA 1058. See also PARA 555 ante; and cf *Maynegrain Pty Ltd v Compafina Bank* (1984) 58 ALJR 389, PC.

2 See ESTOPPEL vol 16(2) (Reissue) PARA 1059. However, where car dealers gave possession of a car and its registration book to a thief, it was held that they did not make a representation to those who had any dealings with the thief that he owned the car: *Central Newbury Car Auctions Ltd v Unity Finance Ltd* [1957] 1 QB 371, [1956] 3 All ER 905, CA; *J Sargent (Garages) Ltd v Motor Auctions (West Bromwich) Ltd* [1977] RTR 121, CA; *Beverley Acceptances Ltd v Oakley* [1982] RTR 417, CA; see also *Cadogan Finance Ltd v Lavery and Fox* (1982) 132 NLJ 1101 (aircraft); cf *Moorgate Mercantile Co Ltd v Twitchings* [1977] AC 890, [1976] 2 All ER 641, HL, where it was held that no breach of duty arose from the answers given to a potential purchaser by an information agency; *Cadogan Finance Ltd v Lavery and Fox* supra, where it was held that no breach of duty arose from the fact that the owners of an aircraft leased on hire purchase left it to the lessees to make the necessary statutory notification and registration of the aircraft; cf *Shaw v Metropolitan Police Comr* [1987] 3 All ER 405, [1987] 1 WLR 1332, CA (car owner agreed, contrary to true position, to conduct himself as if he had agreed to sell the car to a person who turned out to be fraudulent, and signed document stating that that person had brought the car; car owner held not to be precluded by his conduct from denying the fraudulent person's authority to sell the car within the Sale of Goods Act 1979 s 21, because that provision requires the intermediate seller to have sold the goods to the innocent buyer, and not merely (as was the position here) to have agreed to sell them (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 150, 158)); *Debs v Sibec Developments Ltd* [1990] RTR 91 (no duty of care to subsequent purchasers, and no estoppel against asserting title, on part of car owner who, in response to threats to his life, signed purported receipt for sale price of the car in favour of robbers). See also PARA 638 ante.

If an action in conversion is brought against B and another action is brought for the same chattel against C, and the claimant succeeds in the action against B and fails in the action against C on a plea denying the claimant's property and C is a party to the delivery of the chattel to the claimant under the judgment against B, but at the same time gives notice to the claimant demanding the chattel from him, C is not estopped by being a party to the delivery from proving his title and recovering the chattel from the claimant: *Sandys v Hodgson* (1839) 10 Ad & El 472.

3 *Union Credit Bank Ltd v Mersey Docks and Harbour Board, Union Credit Bank Ltd v Mersey Docks and Harbour Board and North and South Wales Bank Ltd* [1899] 2 QB 205. The negligence must be a breach of duty owed to the person misled, and the person complaining that he was misled must have acted reasonably (see ESTOPPEL vol 16(2) (Reissue) PARAS 1061, 1072; and *Lancashire and Yorkshire Rly Co, London and North Western Rly Co and Graeser Ltd v MacNicoll* (1918) 88 LJKB 601. See also *Moorgate Mercantile Co Ltd v Twitchings* [1977] AC 890, [1976] 2 All ER 641, HL, and note 2 supra); *Debs v Sibec Developments Ltd* [1990] RTR 91. It is thought that the defendant's ability to plead an estoppel by reference to the negligence of the claimant is not affected by the Torts (Interference with Goods) Act 1977 s 11(1), which provides that contributory negligence is

no defence to proceedings founded on conversion: see PARA 639 ante. The owner of a negotiable security which had been stolen was held to be estopped by negligence on failure to warn the public: see *Beckwith v Corral* (1826) 3 Bing 444.

4 *Brewer and Gregory v Sparrow* (1827) 7 B & C 310. The owner in such a case cannot affirm the acts of the seller in part and avoid them as to the rest: *Brewer and Gregory v Sparrow* supra; cf PARAS 640-641 ante.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### **645 Estoppel**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/646. Waiver.

### **646. Waiver.**

If the claimant in a claim for conversion has previously waived the tort by recovering under judgment in an action for money had and received<sup>1</sup> or electing to affirm a sale of the goods sought to be recovered, the defendant may avail himself of the waiver as a defence to the action in conversion<sup>2</sup>.

1 See *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1, [1940] 4 All ER 20, HL, cited in PARA 640 note 3 ante.

2 See PARA 640 ante.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/647. Power to sell uncollected goods.

#### 647. Power to sell uncollected goods.

There is provision<sup>1</sup> for sale by the bailee of goods in his possession or under his control where<sup>2</sup>:

- 10 (1) the bailor is in breach of an obligation to take delivery of them<sup>3</sup> or, if the terms of the bailment so provide, to give directions for their delivery<sup>4</sup>; or
- 11 (2) the bailee could impose such an obligation<sup>5</sup> by giving notice to the bailor but is unable to trace or communicate with him<sup>6</sup>; or
- 12 (3) the bailee can reasonably expect to be relieved of any duty to safeguard the goods on giving notice to the bailor, but is unable to trace or communicate with him<sup>7</sup>.

The bailee's power to sell the goods can be exercised only if he has either given notice to the bailor of his intention to sell the goods<sup>8</sup> or he has failed to trace or communicate with him with a view to giving such notice after having taken reasonable steps for the purpose<sup>9</sup>, and if he is reasonably satisfied that the bailor owns the goods<sup>10</sup>. The bailee is then liable to account to the bailor for any proceeds of sale less any costs of sale<sup>11</sup>. Such a sale gives a good title to the purchaser as against the bailor<sup>12</sup> but where the bailor did not in fact own the goods, the sale<sup>13</sup> does not give good title against the owner or against a person claiming under the owner<sup>14</sup>.

Where a bailee of goods to which these provisions apply satisfies the court that he is entitled to sell the goods, or would be had he given notice<sup>15</sup>, the court<sup>16</sup>:

- 13 (a) may authorise the sale of the goods subject to such terms and conditions, if any, as may be specified in the order<sup>17</sup>;
- 14 (b) may authorise the bailee to deduct from the proceeds of sale any costs of sale and any amount due from the bailor to the bailee in respect of the goods<sup>18</sup>; and
- 15 (c) may direct the payment into court of the net proceeds of sale to be held to the credit of the bailor<sup>19</sup>.

1 The following provisions do not apply where the goods were bailed before the commencement of the Torts (Interference with Goods) Act 1977: s 12(9). See also *Anderson and Anderson v Earlanger* [1980] CLY 133. As to the commencement of the Torts (Interference with Goods) Act 1977 see PARA 546 ante. As to bailment generally see BAILMENT.

2 Ibid s 12(1).

3 For examples of cases where such an obligation was held to have been broken see *Pedrick v Morning Star Motors Ltd* (14 February 1979, unreported), CA; *Ridyard v Roberts* (16 May 1980, unreported), CA.

4 Torts (Interference with Goods) Act 1977 s 12(1)(a).

5 For the purposes of ibid s 12(1) a bailee may, in certain circumstances (see heads (1)-(3) infra), by notice given to the bailor, impose on him an obligation to take delivery of the goods: s 12(2), Sch 1 Pt I para 1(1). The circumstances referred to are:

- 1 (1) if a bailee has accepted goods for repair or other treatment on the terms (expressed or implied) that they will be re-delivered to the bailor when the repair or other treatment has been carried out, the notice may be given at any time after the repair or other treatment has been carried out (Sch 1 Pt I para 2);
- 2 (2) if a bailee has accepted goods in order to value or appraise them, the notice may be given at any time after the bailee has carried out the valuation or appraisal (Sch 1 Pt I para 3);
- 3 (3) if a bailee is in possession of goods which he has held as custodian, and his obligation as custodian has come to an end, the notice may be given at any time after the ending of the obligation, or may be combined with any notice terminating his obligation as custodian (Sch 1 Pt I para 4(1)). However, this does not apply to goods held by a person as mercantile agent, that is

to say by a person having in the customary course of his business as a mercantile agent authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods (Sch 1 Pt I para 4(2)).

Schedule 1 Pt 1 paras 2, 3 and 4 apply whether or not the bailor has paid any amount due to the bailee in respect of the goods, and whether or not the bailment is for reward, or in the course of business, or gratuitous: Sch 1 Pt I para 5. 'Bailor' and 'bailee' include their respective successors in title: s 12(7)(a). References to what is payable, paid or due to the bailee in respect of the goods include references to what would be payable by the bailor to the bailee as a condition of delivery of the goods at the relevant time: s 12(7)(b). For the meaning of 'goods' see PARA 545 text to note 6 ante.

The notice must be in writing, and may be given either by delivering it to the bailor, or by leaving it at his proper address, or by post: Sch 1 Pt I para 1(2). For the purposes of Sch 1, and of the Interpretation Act 1978 s 7, Sch 2 para 3 in its application to the Torts (Interference with Goods) Act 1977 Sch 1, the proper address of the person to whom a notice is to be given is: (1) in the case of a body corporate, a registered or principal office of the body corporate; and (2) in any other case, the last known address of the person: Sch 1 Pt II para 8; Interpretation Act 1978 s 17(2). Where the notice is sent by post it may be combined with a notice under the Torts (Interference with Goods) Act 1977 Sch 1 Pt II if the notice is sent by post in a way complying with Sch 1 Pt II para 6(4) (see note 8 infra): Sch 1 Pt I para 1(4). The notice must:

- 4 (a) specify the name and address of the bailee, and give sufficient particulars of the goods and the address or place where they are held (Sch 1 Pt I para 1(3)(a)); and
- 5 (b) state that the goods are ready for delivery to the bailor, or where combined with a notice terminating the contract of bailment, will be ready for delivery when the contract is terminated (Sch 1 Pt I para 1(3)(b)); and
- 6 (c) specify the amount, if any, which is payable by the bailor to the bailee in respect of the goods and which became due before the giving of the notice (Sch 1 Pt I para 1(3)(c)).

References in Sch 1 Pt I to taking delivery of the goods include, where the terms of the bailment admit, references to giving directions as to their delivery (Sch 1 Pt I para 1(5)). Sch 1 Pt I is without prejudice to the provisions of any contract requiring the bailor to take delivery of the goods (Sch 1 Pt I para 1(6)). The provisions of s 12 and Sch 1 have effect subject to the terms of the bailment: s 12(8).

6 Ibid s 12(1)(b).

7 Ibid s 12(1)(c).

8 Ibid s 12(3)(a). The notice of intention to sell the goods must be in accordance with Sch 1 Pt II: s 12(3)(a). A notice under s 12(3) must:

- 7 (a) specify the name and address of the bailee, and give sufficient particulars of the goods and the address or place where they are held (Sch 1 Pt II para 6(1)(a)); and
- 8 (b) specify the date on or after which the bailee proposes to sell the goods (Sch 1 Pt II para 6(1)(b)); and
- 9 (c) specify the amount, if any, which is payable by the bailor to the bailee in respect of the goods, and which became due before the giving of the notice (Sch 1 Pt II para 6(1)(c)).

The notice must be in writing and sent by post in a registered letter, or by the recorded delivery service: Sch 1 Pt II para 6(4). The period between giving of the notice and the date specified in the notice as that on or after which the bailee proposes to exercise the power of sale must be such as will afford the bailor a reasonable opportunity of taking delivery of the goods: Sch 1 Pt II para 6(2). If any amount is payable in respect of the goods by the bailor to the bailee, and became due before giving of the notice, the said period must not less than three months: Sch 1 Pt II para 6(3).

The bailee may not give a notice under s 12(3), or exercise his right to sell the goods pursuant to such a notice, at a time when he has notice that, because of a dispute concerning the goods, the bailor is questioning or refusing to pay all or any part of what the bailee claims to be due to him in respect of the goods: Sch 1 Pt II para 7(1). As to when this provision is to be left out of account see note 16 infra.

9 Ibid s 12(3)(b).

10 Ibid s 12(3).

11 Ibid s 12(5). The account must be taken on the footing that the bailee has adopted the best method of sale reasonably available in the circumstances: s 12(5)(a). Where s 12(3)(a) applies (see the text and note 8

supra), any sum payable in respect of goods by the bailor to the bailee which accrued before the bailee gave notice of intention to sell, is deductible from the proceeds of sale: s 12(5)(b).

12 Ibid s 12(6).

13 Ie a sale under ibid s 12 or s 13: s 12(4).

14 Ibid s 12(4).

15 Ie notice under ibid Sch 1: see the text and note 5 supra.

16 Ibid s 13(1). Schedule 1 Pt II para 7 (see note 8 supra) is to be left out of account in determining under s 13(1) whether a bailee of goods is entitled to sell the goods under s 12, or would be so entitled if he had given any notice required in accordance with Sch 1: Sch 1 Pt II para 7(2). A decision of the court authorising a sale under s 13 is, subject to any right of appeal, conclusive as against the bailor of the bailee's entitlement to sell the goods, and gives good title to the purchaser against the bailor: s 13(2). 'The court' means the High Court or a county court and a county court has jurisdiction in the proceedings: s 13(3); and see COURTS.

17 Ibid s 13(1)(a).

18 Ibid s 13(1)(b).

19 Ibid s 13(1)(c).

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/648. Joint tortfeasors.

### 648. Joint tortfeasors.

Judgment recovered against any person liable in respect of any damage is not a bar to an action, or to the continuance of an action, against any other person who, apart from any such bar, is jointly liable with him in respect of the same damage<sup>1</sup>.

1 Civil Liability (Contribution) Act 1978 s 3. As to joint tortfeasors generally see TORT vol 97 (2010) PARA 447, 602 ante. As to the availability of a remedy against a third person see PARA 629 ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

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#### **649. Discharge.**

If the claimant in a claim for conversion has accepted part of the proceeds of the tortious dealing in full discharge of his claims against the defendant or against a joint tortfeasor with the defendant, and has thus released his claims, his acceptance is a bar to the action<sup>1</sup>.

1 See *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1 at 43, [1940] 4 All ER 20 at 46, HL. See also PARA 641 ante, and TORT vol 97 (2010) PARA 485. As to the election to sue for money had and received see PARA 640 ante, and TORT vol 97 (2010) PARA 472. As to the rule that the release of one joint tortfeasor releases the others see TORT vol 97 (2010) PARA 449. A recovery in trespass is a bar to an action in conversion for the same taking: *Putt v Roster* (1682) 2 Mod Rep 318. See also CIVIL PROCEDURE vol 12 (2009) PARA 1170. The right to take proceedings against a person in possession of property delivered under an order made under the Police (Property) Act 1897 s 1(1) (as amended) ceases on the expiration of six months from the date of the order: s 1(2); and see MAGISTRATES; POLICE vol 36(1) (2007 Reissue) PARA 520; and PARA 565 note 5 ante.

#### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/650. Return of the goods.

#### **650. Return of the goods.**

The defendant in an action for conversion may allege and show that he returned the goods either before or after action brought, and this plea is an answer to the claim for the return of the goods or payment of their value, although if the defendant has sustained any consequential damage he may recover in respect of it<sup>1</sup>.

Where the defendant commits an irreversible or irretrievable conversion, and the goods have fallen in value between the date of conversion and the date of return, the claimant will recover damages for the amount by which the value of the goods at the date of conversion exceeds their value at the date of return<sup>2</sup>. The position will be otherwise where the conversion merely takes the form of a wrongful detention and the claimant had no intention of selling the goods, or otherwise profitably disposing of them, during the period of detention<sup>3</sup>.

1 *Crossfield v Such* (1853) 8 Exch 159; *United States of America and Republic of France v Dollfus Mieg & Cie SA and Bank of England* [1952] AC 582 at 619, [1952] 1 All ER 572 at 590, HL, per Lord Radcliffe; *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184, [1983] 1 WLR 959. As to consequential damages see PARA 630 ante. As to the position where no damage is sustained see PARA 635 ante.

2 *BBMB Finance Hong Kong Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC; *Solloway v McLaughlin* [1938] AC 247 at 257-259, [1937] 4 All ER 328 at 332, 333, PC.

3 *Brandeis Goldschmidt & Co Ltd v Western Transport Ltd* [1981] QB 864, [1982] 1 All ER 28, CA. As to the measure of damages in conversion generally see PARA 615 et seq ante. As to the limitation of the amount recoverable by way of damages to the loss actually sustained see PARA 615 ante.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/651. Payment into court.

#### **651. Payment into court.**

Payment of money into court cannot be made in respect of a claim for the return of goods or their value, but it can be made in respect of a claim for damages for conversion<sup>1</sup>.

1 See *Allan v Dunn* (1857) 1 H & N 572; and CIVIL PROCEDURE. As to payments into court see CPR Pt 36; and CIVIL PROCEDURE.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(i) Defences/652. Lapse of time.

#### **652. Lapse of time.**

An action for conversion is generally barred at the expiration of six years from the accrual of the cause of action<sup>1</sup>. The limitation period begins to run from the date of the conversion; and subject to fraud in the defendant<sup>2</sup> this is so even where the owner does not become aware of the conversion until later<sup>3</sup>. The limitation period does not run in favour of a thief<sup>4</sup> and it does not apply to any conversion which is related to the theft of a chattel<sup>5</sup>. Every conversion following the theft of a chattel before the person from whom it was stolen recovers possession of it is, for these purposes, regarded as related to the theft unless the contrary is shown<sup>6</sup>. If

anyone purchases the stolen chattel in good faith neither the purchase nor any conversion following it is to be regarded as related to the theft<sup>7</sup>. In this regard, theft includes any conduct outside England and Wales which would be theft if committed in England and Wales and obtaining any chattel (in England and Wales or elsewhere) by deception<sup>8</sup> or by blackmail<sup>9</sup>.

In a case of conversion by wrongful detention alone, time runs from the refusal of a lawful demand for the return of the goods or their equivalent<sup>10</sup>. In the case of successive conversions or detentions, time normally runs from the accrual of the cause of action in respect of the original conversion or detention<sup>11</sup>.

1 Limitation Act 1980 s 2; and see LIMITATION PERIODS vol 68 (2008) PARAS 908 (special periods of limitation), 952, 987 (general periods of limitation), 992 (title deeds), 1140, 1142 (property converted by trustee).

2 See *ibid* s 32 (as amended); and see LIMITATION PERIODS vol 68 (2008) PARA 1220 et seq.

3 *Granger v George* (1826) 5 B & C 149; *RB Policies at Lloyd's v Butler* [1950] 1 KB 76, [1949] 2 All ER 226; and see LIMITATION PERIODS vol 68 (2008) PARA 987. However, the limitation period may not run where the goods have been stolen from the claimant: see the Limitation of Act 1980 s 4; and LIMITATION PERIODS vol 68 (2008) PARA 990. As to whether a subsequent demand and refusal might revive the earlier conversion see s 3(1); LIMITATION PERIODS vol 68 (2008) PARA 988.

4 See *ibid* s 4(1).

5 See *ibid* s 4(2).

6 *Ibid* s 4(2), (4). As to the factors to which the court will have regard when assessing a defendant's contention that his purchase of a stolen chattel was not related to the theft see *De Préval v Adrian Alan Ltd* (31 January 1997, unreported).

7 Limitation Act 1980 s 4(2).

8 Ie in the circumstances described by the Theft Act 1968 s 15(1): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 310.

9 Ie within the meaning of *ibid* s 21 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 308); Limitation Act 1980 s 4(5).

10 See BAILMENT vol 3(1) (2005 Reissue) PARAS 85, 87; LIMITATION PERIODS vol 68 (2008) PARA 987. See also *Miller v Dell* [1891] 1 QB 468, CA. The same would appear true of an action for conversion under the Torts (Interference with Goods) Act 1977 s 2(2) (see PARA 548 ante), because the section assumes that the bailee's default would formerly have given rise to an action in detinue, and such an action had to be prefaced by a demand.

11 See the Limitation Act 1980 s 3(1); and LIMITATION PERIODS vol 68 (2008) PARA 988.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(j) Judgment/653. Form of judgment where goods are detained.

#### *(j) Judgment*

#### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

## 652 Lapse of time

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 8, 9--Limitation Act 1980 s 4(5) amended: Fraud Act 2006 Sch 1 para 18.

## 653. Form of judgment where goods are detained.

In proceedings for conversion<sup>1</sup> against a person in possession or control of the goods<sup>2</sup>, the following relief may be given, as far as appropriate<sup>3</sup>:

- 16 (1) an order for delivery of the goods and for payment of any consequential damages<sup>4</sup>;
- 17 (2) an order for delivery of the goods, but giving the defendant the alternative of paying damages by reference to the value of the goods, together, in either alternative, with payment of any consequential damages<sup>5</sup>; or
- 18 (3) damages<sup>6</sup>.

Subject to rules of court, relief may be given under only one of head (1), head (2) or head (3) above<sup>7</sup>, and relief under head (1) is at the discretion of the court and the claimant may choose between the others<sup>8</sup>.

If it is shown to the court's satisfaction that an order under head (1) above has not been complied with, the court may revoke the order, or the relevant part of it<sup>9</sup>, and make an order for payment of damages by reference to the value of the goods<sup>10</sup>. Where an order is made under head (2) above, the defendant may satisfy the order by returning the goods at any time before execution of judgment, but without prejudice to liability to pay any consequential damages<sup>11</sup>. An order for delivery of the goods under head (1) or head (2) above may impose such conditions as the court may determine<sup>12</sup>, or as may be determined pursuant to rules of court, and in particular, where damages by reference to the value of the goods would not be the whole of the value of the goods, may require an allowance to be made by the claimant to reflect the difference<sup>13</sup>.

These provisions are without prejudice to the remedies afforded by certain statutory provisions<sup>14</sup>, or to any jurisdiction to afford ancillary or incidental relief<sup>15</sup>.

1 This provision also applies to other proceedings for wrongful interference, ie trespass to goods, negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 ss 1 (as amended), 3(1). For the meaning of 'wrongful interference' see PARA 545 text and notes 2-5 ante. As to proceedings for wrongful interference see PARA 545 note 4 ante. For the meaning of 'goods' see PARA 545 text to note 6 ante. As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 ante.

2 As to the significance of this phrase in cases where the goods have been returned to the claimant or disposed of before the time of judgment see *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184, [1983] 1 WLR 959, and notes 4-6 infra.

3 Torts (Interference with Goods) Act 1977 s 3(1). As to judgment on failure to give notice of intention to defend or in default of defence see CPR Pt 12. As to the CPR see PARA 628 note 2 ante; and CIVIL PROCEDURE. See also *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184, [1983] 1 WLR 959.

4 Torts (Interference with Goods) Act 1977 s 3(2)(a). An order for delivery up, with or without the alternative of damages, is not possible if before judgment the goods have been disposed of or returned to the claimant:

*Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184 at 188, [1983] 1 WLR 959 at 963, per Parker J; cf *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579, [1980] 1 WLR 1375; *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA; *Adventure Film Production Ltd v Tully* (1982) Times, 14 October; *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA; *Secretary of State for Defence v Guardian Newspapers Ltd* [1984] Ch 156, [1984] 1 All ER 453, CA (affd [1985] AC 339, [1984] 3 All ER 601, HL); and PARA 654 post. As to the damages recoverable where goods are returned prior to judgment see PARA 650 ante, and *Hillesden Securities Ltd v Ryjak Ltd* supra. As to consequential damages see PARA 630 ante. See also *Chubb Cash Ltd v John Crilley & Son* [1983] 2 All ER 294 at 298, [1983] 1 WLR 599 at 604, CA, per Bush LJ; and note 6 infra.

5 Torts (Interference with Goods) Act 1977 s 3(2)(b). See also the cases cited in note 4 supra.

6 Ibid s 3(2)(c). Section 3 has not affected the common law rules relating to damages for conversion: *Chubb Cash Ltd v John Crilley & Son (a firm)* [1983] 2 All ER 294 at 298, [1983] 1 WLR 599 at 604, CA, per Bush LJ. For an account of the forms of judgment in conversion and detinue before 1978 see *General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd* [1963] 2 All ER 314, [1963] 1 WLR 644, CA. See also *Metals and Ropes Co Ltd v Tattersall* [1966] 3 All ER 401, [1966] 1 WLR 1500, CA. A court may award damages under the Torts (Interference with Goods) Act 1977 s 3(2)(c) even though the defendant has returned the goods to the claimant or disposed of the goods to a third person before the time of judgment, where the defendant was in possession or control of the goods when the proceedings were commenced: *Hillesden Securities Ltd v Ryjak Ltd* [1983] 2 All ER 184 at 187-188, [1983] 1 WLR 959 at 963 per Parker J. Although the Torts (Interference with Goods) Act 1977 s 2(1) has abolished detinue, s 3 in effect preserves the remedies for what previously would have constituted detinue: *Hillesden Securities Ltd v Ryjak Ltd* supra at 187 and at 962 per Parker J.

7 Torts (Interference with Goods) Act 1977 s 3(3)(a). As to rules of court providing an exception to s 3(3) see note 8 infra.

8 Ibid s 3(3)(b). See also PARA 654 text and note 4 post. Where a claim relating to detention of goods is made by a part owner whose claim is not based on a right to possession title, any judgment or order given or made in respect of the claim will, notwithstanding s 3(3) be for the payment of damages only unless the part owner had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself: CPR 40.14(2). 'Part owner' means one of the two or more persons who have an interest in the same goods: CPR 40.14(1). These rules apply notwithstanding anything in the Torts (Interference with Goods) Act 1977 s 3(3) but do not affect the remedies and jurisdiction mentioned the Torts (Interference with Goods) Act 1977 s 3(8) (see the text and notes 14, 15 infra): CPR 40.14(3).

9 Torts (Interference with Goods) Act 1977 s 3(4)(a).

10 Ibid s 3(4)(b).

11 Ibid s 3(5).

12 Thus the court might fix a time and place for the delivery of the goods, subject, where the defendant is not present or represented at the hearing, to liberty to apply to vary the order: see further the Eighteenth Report of the Law Reform Committee (Conversion and Detinue) 1971 (Cmnd 4774) PARA 94.

13 Torts (Interference with Goods) Act 1977 s 3(6). For example a bailor's action against the bailee may be one in which the measure of damages is not the full value of the goods, and then the court may order delivery of the goods but require the bailor to pay the bailee a sum reflecting the difference: s 3(6). Where an allowance is to be made under s 6(1) or (2) in respect of an improvement of the goods (see PARAS 623-624 ante) and an order is made under s 3(2)(a) or (b), the court may assess the allowance to be made in respect of the improvement, and by the order require, as a condition for delivery of the goods, that allowance to be made by the claimant: s 3(7).

14 Ie the remedies afforded by the Consumer Credit Act 1974 s 133 (see CONSUMER CREDIT vol 9(1) (Reissue) PARA 293) and the Hire-Purchase Act 1965 ss 35, 42, 44 (all repealed) (see CONSUMER CREDIT vol 9(1) (Reissue) PARA 6): Torts (Interference with Goods) Act 1977 s 3(8)(a), (b).

15 Ibid s 3(8)(c).

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain

persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### **653 Form of judgment where goods are detained**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--CPR Pt 12 amended: SI 2000/221, SI 2000/940, SI 2001/1388, SI 2001/4015.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(j) Judgment/654. Interim remedy where goods are detained.

### **654. Interim remedy where goods are detained.**

On the application<sup>1</sup> of any party in accordance with the rules of court<sup>2</sup>, the High Court may, in such circumstances as may be specified in the rules, make an order providing for the delivery up of any goods which are or may become the subject matter of subsequent proceedings in court, or as to which any question may arise in proceedings<sup>3</sup>. Delivery must be (as the order may provide) to the claimant or to a person appointed by the court for the purpose, and must be on such terms and conditions as may be specified in the order<sup>4</sup>.

The power to order delivery is discretionary<sup>5</sup>. It enables the court, where appropriate, to order a defendant to permit the claimant or some other person to collect the goods for himself, and to transfer authority over them, without requiring active steps on the part of the defendant<sup>6</sup>. The court's discretion may be exercised in favour of a claimant even though there is no urgent or imminent risk of disposal, loss or destruction of the goods<sup>7</sup>. However, in general it will not be exercised in his favour if damages would fully compensate him for his loss<sup>8</sup>. The court will not ordinarily be deterred from making an order for delivery on the ground that the defendant has been threatened with adverse consequences by third persons (for example where there is a credible threat of industrial action by his employees) if he surrenders the goods<sup>9</sup>.

The court may also, where there is a serious question to be tried, make an interim order by way of injunction<sup>10</sup>.

1 The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice: CPR 25.3(1). An application for an interim remedy must be supported by evidence, unless the court orders otherwise: CPR 25.3(2). If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given: CPR 25.3(3). Subject to any rule, practice direction or other enactment which provides otherwise an order for an interim remedy may be made at any time, including before proceedings are started and after judgment has been given: CPR 25.2(1), 25.2(2)(a). The court may grant an interim remedy before a claim has been made only if the matter is urgent or it is otherwise desirable to do so in the interests of justice: CPR 25.2(2)(b). Unless the court otherwise orders, a defendant may not apply for any interim order listed in CPR 25.1 before he has filed either an acknowledgement of service or a defence: CPR 25.2(2)(c). See also *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA; and note 5 *infra*. As to the CPR see PARA 628 note 2 *ante*; and CIVIL PROCEDURE.

2 The power to make rules of court under the Supreme Court Act 1981 s 84 (see COURTS) includes power to make rules of court as to the manner in which an application for such an order can be made, and as to the

circumstances in which such an order can be made; and any such rules may include such incidental, supplementary and consequential provisions as the authority making the rules may consider necessary or expedient: Torts (Interference with Goods) Act 1977 s 4(4) (amended by the Supreme Court Act 1981 s 152(1), Sch 5). See CPR 25.1(e) which enables the court to grant, as an interim remedy, an order under the Torts (Interference with Goods) Act 1977 s 4 (as amended) to deliver up goods.

3 *Ibid* s 4(2). 'Proceedings' means proceedings for wrongful interference: s 4(1). For the meaning of 'wrongful interference' see PARA 545 text and notes 2-5 ante. As to proceedings for wrongful interference see PARA 545 note 4 ante. Section 4 has effect in relation to county courts as it has effect in relation to the High Court, and as if the references to rules of court and to the Supreme Court Act 1981 s 84 include references to county court rules and to the County Courts Act 1984 s 75: Torts (Interference with Goods) Act 1977 s 4(5) (amended by the Supreme Court Act 1981 s 152(1), Sch 5; and the County Courts Act 1984 s 148(1), Sch 2 Pt V para 64). As to judgment on failure to give notice of intention to defend and judgment in default of defence see CPR Pt 12 and *Practice Direction-Default Judgment* (1999) PD 12. The considerations which apply to the grant of a mandatory injunction in a particular case may also, in appropriate circumstances, become relevant and applicable to an application for an order for delivery up under the Torts (Interference with Goods) Act 1977: *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA, per Dillon LJ. See also note 9 infra.

4 Torts (Interference with Goods) Act 1977 s 4(3); cf PARA 653 text and note 12 ante. As to conditions attached to an order see *Adventure Film Productions Ltd v Tully* (1982) Times, 14 October, where on an order for the delivery of uncompleted film and other material a condition was attached that the first defendant, who had collaborated in the making of the film, should be enabled to see the final version, should be entitled to object to any attribution of any part of the film to himself and should, if he desired, receive credit for the scenes which he shot. A further condition was attached that any money thereafter received in respect of the film by the plaintiffs from a television company should be paid into a separate bank account in the control of the plaintiffs' solicitors, in order to safeguard the defendants' share of the profits. See also *Secretary of State for Defence v Guardian Newspapers Ltd* [1984] Ch 156 at 168, [1984] 1 All ER 453 at 460, CA, per Slade LJ, where in an action for recovery of a photocopy of a classified document, the property of the Crown, it was held that the defendants should not be entitled to remove or obliterate certain marks which would have assisted in identifying the person who had released the photocopy to the defendants.

This decision, and that of the House of Lords on appeal, deals with the effect of the Contempt of Court Act 1981 s 10 (see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 408) upon the court's power to make an order for the delivery up of goods. The section does not destroy the cause of action for detention of documents or affect its nature; what it does is to affect what interlocutory orders can be made by the court in the action, what questions witnesses might be compelled to answer and what documents they might be required to produce at the trial, and what relief under the Torts (Interference with Goods) Act 1977 might be granted in the judgment; where the predominant purpose of the action was to obtain possession of a document in order to find out from examining it the identity of the source of information, the Contempt of Court Act 1981 s 10 would be a matter that the judge would have to consider in deciding how to exercise his discretion under the Torts (Interference with Goods) Act 1977 s 3(3)(b) (see PARA 653 ante): *Secretary of State for Defence v Guardian Newspapers Ltd* [1984] 3 All ER 601 at 608, [1985] AC 339 at 351, HL, per Lord Diplock. As to an interim order requiring delivery where the defendant pleads that he has a lien on the goods see PARA 643 ante.

5 See *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579 at 585, [1980] 1 WLR 1375 at 1382 per Sir Robert Megarry V-C; *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA. See also *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435 at 439, CA, per Kerr LJ, where sellers in possession of cables, the property in which had passed to the buyers, wished to deliver them to Iran to comply with a rival claim to ownership made by the Iranian government, fearing that retaliatory measures might otherwise be taken against their interests in Iran. The buyers were held entitled to an order that, pending the outcome of their action, the sellers should not part with possession of the cables; the sellers should not be enabled, by resisting an injunction, to deprive the buyers of the right to ask the court at the trial to exercise its discretion to order delivery or damages under the Torts (Interference with Goods) Act 1977 s 3(2)(a) (see PARA 653 ante). See also *Adventure Film Productions Ltd v Tully* (1982) Times, 14 October; *Secretary of State for Defence v Guardian Newspapers Ltd* [1984] Ch 156 at 165-166, [1984] 1 All ER 453 at 458, CA, per Donaldson MR, and at 463 and at 280 per Slade LJ.

6 See *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579 at 588, [1980] 1 WLR 1375 at 1385 per Sir Robert Megarry V-C. Cf *Metals and Ropes Co Ltd v Tattersall* [1966] 3 All ER 401, [1966] 1 WLR 1500, CA; *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA (order that the defendants should retain the plaintiffs' goods in their possession until the outcome of the action). See also *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA.

7 See *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579 at 585, [1980] 1 WLR 1375 at 1382 per Sir Robert Megarry V-C. Thus an order may be made where the goods are gradually deteriorating, or are urgently required to avoid losses elsewhere: *Howard E Perry & Co Ltd v British Railways Board* supra at 585 and at 1382 per Sir Robert Megarry V-C. See also *Adventure Film Products Ltd v Tully* (1982) Times, 14 October, where an order for the delivery up of an uncompleted film to its owners was justified by the fact that considerable time would be wasted and considerable expenditure incurred in reshooting the film if it were

further withheld. See also *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA; *Secretary of State for Defence v Guardian Newspapers Ltd* [1984] Ch 156 at 165-166, [1984] 1 All ER 453 at 458, CA, per Donaldson MR, at 167-168 and 460 per Griffiths LJ, and at 171-172 and 462-463 per Slade LJ; and see note 4 *supra*.

8 See *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579 at 585-586, [1980] 1 WLR 1375 at 1382-1383 per Sir Robert Megarry V-C, where steel was detained by the defendants under indirect threat of industrial action by employees during a steel strike and the commodity was unobtainable elsewhere and the detained steel was losing its malleability, the order was granted. See also *Adventure Film Productions Ltd v Tully* (1982) Times, 14 October (loss of time, trouble and goodwill to plaintiffs in reshooting film withheld by defendants held to justify order for delivery up); *Secretary of State for Defence v Guardian Newspapers Ltd* [1984] Ch 156, [1984] 1 All ER 453, CA (order made where Crown claimed delivery of document which had minimal intrinsic worth, where denial of the order would effectively have deprived the Crown of any effective remedy). See also *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA, where the defendants relied upon an exclusion clause to show that no damages would have been recoverable for the detention of the plaintiffs' maize. The defendants did not dispute the plaintiffs' ownership and right to possession of the maize, and conceded that their detention of it was *prima facie* tortious, but contended that the order should be refused because damages would have been an adequate remedy. It was held that, whereas in the absence of the clause damages would have been an adequate remedy, the possible inability of the plaintiffs to recover damages because of the exclusion clause removed the only possible special circumstance which could otherwise have justified a refusal to order delivery to the plaintiffs. Further, the defendants' concession that their detention was *prima facie* tortious precluded them from arguing that the exclusion clause excluded the remedy of an order for delivery up of the goods. In a case of this nature, where there was no defence to the plaintiffs' assertion of ownership and the right to delivery of the goods, the balance of convenience was not a factor to be considered in determining whether an order for delivery up should be made. The validity of the judge's exercise of his discretion to order delivery in this case was not affected by the fact that he had invited the defendants to consider giving the plaintiffs an indemnity against loss, which invitation the defendants had declined. Cf *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA, where it was held that the question whether damages were an adequate remedy was irrelevant in an exceptional case where the defendants themselves neither had nor claimed to have any rights in the goods. Such a question is relevant where the defendant claims some proprietary or possessory right to the goods, but cannot be given weight where there is no unresolved contest of alleged and disputed rights and the defendant asserts no right to the subject matter of the main dispute. As to the balance of convenience in proceedings under the Torts (Interference with Goods) Act 1977 s 4 (as amended) see the preceding cases.

9 See *Howard E Perry & Co Ltd v British Railways Board* [1980] 2 All ER 579 at 586-588, [1980] 1 WLR 1375 at 1383-1385 per Sir Robert Megarry V-C. But a court should interfere by way of mandatory injunction in the delicate mechanism of industrial disputes and industrial negotiations only in very rare and extreme circumstances (*Harold Stephen & Co Ltd v Post Office* [1978] 1 All ER 939 at 944, [1977] 1 WLR 1172 at 1180, CA, per Geoffrey Lane LJ); and this principle can be equally applicable where an order is sought for delivery up under the Torts (Interference with Goods) Act 1977 s 4 (*Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA, per Dillon LJ). The court is therefore entitled to form its own assessment of the risk that industrial disruption may result from the making of the order and the risk that, if made, the order might not be enforceable: *Cargill Albion Ltd v Port of London Authority* *supra*. See further *Harold Stephen & Co Ltd v Post Office* *supra*. See also *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA, where the defendants' fear of retaliatory measures against their interests in Iran was held to be an insufficient reason to refuse an order for delivery up of plaintiff's goods, to which the Iranian government had also laid a claim. A court will take care in such proceedings to avoid giving implied *a priori* recognition or authority to what may be penal or confiscatory measures on the part of a foreign government, without informed adjudication upon such claims to which that government is a party: *Redler Grain Silos Ltd v BICC Ltd* *supra* at 439-440 per Kerr LJ, and at 440 per Stephenson LJ.

10 See CIVIL PROCEDURE vol 11 (2009) PARA 385. See also *Redler Grain Silos Ltd v BICC Ltd* [1982] 1 Lloyd's Rep 435, CA; *Cargill Albion Ltd v Port of London Authority* (6 May 1983, unreported), CA.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### 654 Interim remedy where goods are detained

NOTES 2, 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

NOTE 3--*Practice Direction--Default Judgment* (1999) PD 12 amended.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(j) Judgment/655. Extinction of title on satisfaction of claim for damages.

### **655. Extinction of title on satisfaction of claim for damages.**

Where damages for conversion<sup>1</sup> are assessed on the footing that the claimant is being compensated for the whole of his interest in the goods<sup>2</sup>, payment of the assessed damages, under all heads, extinguishes the claimant's title to that interest<sup>3</sup>. Similarly, where damages would fail to be so assessed, settlement of a claim<sup>4</sup> for damages for the wrong, under all heads, extinguishes the claimant's title to the interest<sup>5</sup>. Thus where an owner whose goods are stolen and then converted recovers damages assessed according to the full value of his ownership<sup>6</sup>, the converter becomes the owner and the original owner's title is extinguished<sup>7</sup>.

These provisions<sup>8</sup> do not apply where damages are assessed on the footing that the claimant is being compensated for the whole of his interest in the goods, but the damages are limited to some lesser amount by virtue of any enactment or rule of law<sup>9</sup>. Where under the rules against double liability<sup>10</sup> the claimant accounts over to another person (the 'third party') so as to compensate under all heads the third party for the whole of his interest in the goods, the third party's title to that interest is extinguished<sup>11</sup>.

All the foregoing provisions<sup>12</sup> have effect subject to any agreement varying the respective rights of the parties to the agreement and, where the claim is made in court proceedings, have effect subject to any order of the court<sup>13</sup>.

1 This provision also applies to other proceedings for wrongful interference, ie trespass to goods, negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 ss 1 (as amended), 5(1). For the meaning of 'wrongful interference' see PARA 545 text and notes 2-5 ante. As to proceedings for wrongful interference see PARA 545 note 4 ante. For the meaning of 'goods' see PARA 545 text to note 6 ante. As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 ante.

2 Ibid s 5(1)(a).

3 Ibid s 5(1). For decisions prior to the Act see *Anon* (1505) Jenk 189; *Underwood v Mordant* (1691) 2 Vern 238; *Cooper v Shepherd* (1846) 3 CB 266; *Brinsmead v Harrison* (1871) LR 6 CP 584 (on appeal (1872) LR 7 CP 547, Ex Ch); *Re Ware, ex p Drake* (1877) 5 ChD 866, CA; *Ellis v John Stenning & Son* [1932] 2 Ch 81. Where a plaintiff obtained judgment in detinue for £100, to be reduced to nothing if the chattel were given up, and the chattel was tendered to him, he could not prove in the defendant's bankruptcy for its value: *Re Scarth* (1874) 10 Ch App 234. As to the former action for detinue and its abolition see PARA 542 ante. If a plaintiff recovers an interim judgment against a defendant in a claim for conversion, but does not obtain satisfaction, he may waive the judgment and bring a claim for conversion against a person to whom the defendant had sold the chattel: *Marston v Phillips* (1863) 9 LT 289.

4 Reference to the settlement of the claim includes: (1) where the claim is made in court proceedings, and the defendant has paid a sum into court to meet the whole claim, the taking of that sum by the claimant; and (2) where the claim is made in court proceedings, and the proceedings are settled or compromised, the payment of what is due in accordance with the settlement or compromise; and (3) where the claim is made out

of court and is settled or compromised, the payment of what is due in accordance with the settlement or compromise: Torts (Interference with Goods) Act 1977 s 5(2).

5 Ibid s 5(1). See *Rose Records v Motown Record Corp* [1983] FSR 361, where, in proceedings for conversion of copyright, it was held that the effect of the Torts (Interference with Goods) Act 1977 s 5(1) was not inhibited by the Civil Liability (Contribution) Act 1978 s 3 (as to which see TORT vol 97 (2010) PARA 449).

6 A claimant who seeks to avoid the operation of the Torts (Interference with Goods) Act 1977 s 5(1), and to show that his claim for conversion (or other wrongful interference with goods) is not extinguished, carries the onus of establishing that a settlement of the claim has not compensated him for the whole of his interest in the goods converted: *Macaulay v Screenkarn Ltd* [1987] FSR 257.

7 As to the entitlement to sue in conversion in respect of stolen goods see PARA 565 ante.

8 Ie the Torts (Interference with Goods) Act 1977 s 5(1).

9 Ibid s 5(3).

10 Ie ibid s 7(3): see PARA 637 ante.

11 Ibid s 5(4).

12 Ie ibid s 5(1)-(4).

13 Ibid s 5(5). As to agreement see *Rose Records v Motown Record Corp* [1983] FSR 361.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(j) Judgment/656. Judgment for part of claim.

### 656. Judgment for part of claim.

If an action in conversion is brought in respect of several chattels and the claimant recovers in respect of some but fails in respect of others, the issue is divisible and the claimant is entitled to have judgment in respect of those chattels which he recovers, and the defendant is entitled to judgment as to the remainder<sup>1</sup>.

1 *Williams v Great Western Rly Co* (1841) 8 M & W 856. As to costs see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq. As to judgments see CIVIL PROCEDURE.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain

persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(j) Judgment/657. Action based on illegal contract.

### **657. Action based on illegal contract.**

Where a claimant is entitled<sup>1</sup> to bring an action in conversion in respect of goods or securities mortgaged or pledged under a contract which is open to objection on the ground of illegality, it is doubtful whether judgment will be given in favour of the claimant except upon terms of repaying the money advanced upon the goods or securities<sup>2</sup>.

1. Ie by reason of the fact that he is a person for whose protection the illegality of the contract has been created: see *Lodge v National Union Investment Co Ltd* [1907] 1 Ch 300 at 306; and CONTRACT vol 9(1) (Reissue) PARA 881.

2. *Lodge v National Union Investment Co Ltd* [1907] 1 Ch 300, where the older authorities are reviewed; cf *Kasumu v Baba-Egbe* [1956] AC 539, [1956] 3 All ER 266, PC, where it was held that equitable principles as to the imposition of terms on borrowers seeking relief were inapplicable to a transaction rendered illegal and unenforceable by a Nigerian moneylenders ordinance. The decision in *Lodge v National Union Investment Co Ltd* supra was distinguished in *Chapman v Michaelson* [1909] 1 Ch 238, CA, where the claimant was merely seeking to enforce a legal right, and in *Cohen v J Lester Ltd* [1939] 1 KB 504, [1938] 4 All ER 188, where the contract was merely unenforceable and not illegal. As to the transfer of ownership of goods under an illegal contract see CONTRACT vol 9(1) (Reissue) PARA 881; and as to money paid under an illegal contract generally see CONTRACT vol 9(1) (Reissue) PARA 883.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(B) Conversion/(j) Judgment/658. Delivery of the chattel.

### **658. Delivery of the chattel.**

A judgment or order<sup>1</sup> for the delivery of any goods or payment of their assessed value may be enforced:

- 19 (1) by writ of delivery to recover the goods or their assessed value<sup>2</sup>;
- 20 (2) if the court so orders, by writ of specific delivery<sup>3</sup>;
- 21 (3) where the defendant is required to do or abstain from doing any act<sup>4</sup>, by writ of sequestration<sup>5</sup>.

A judgment or order<sup>6</sup> for the delivery of any goods which does not give a person against whom the judgment is given or the order is made the alternative of paying the assessed value of the goods may be enforced:

- 22 (a) by writ of specific delivery<sup>7</sup>;
- 23 (b) where the defendant is required to do or abstain from doing any act<sup>8</sup>, by an order of committal<sup>9</sup>;
- 24 (c) where the defendant is required to do or abstain from doing any act<sup>10</sup>, by writ of sequestration<sup>11</sup>.

1 As to the form of judgment where goods are detained see PARA 653 ante; and as to judgment generally see PARAS 653-658 ante; and CIVIL PROCEDURE.

2 CPR Sch 1 RSC Ord 45 r 4(2)(a). See also CPR Sch 2 CCR Ord 26 r 16(1), (3); and CIVIL PROCEDURE. As to the CPR see PARA 628 note 2 ante; and CIVIL PROCEDURE.

3 CPR Sch 1 RSC Ord 45 r 4(2)(b). See also CIVIL PROCEDURE vol 12 (2009) PARA 1248. There is no equivalent provision in respect of proceedings in the county court. A writ of specific delivery is a writ of delivery to recover the goods without alternative provision for recovery of their assessed value: CPR Sch 1 RSC Ord 45 r 4(1)(a).

4 Ie under CPR Sch 1 RSC Ord 45 r 5. As to the power to attach conditions to an order for delivery of goods see PARA 653 ante.

5 CPR Sch 1 RSC Ord 45 r 4(2)(c). See also CIVIL PROCEDURE vol 12 (2009) PARA 1248. There is no equivalent provision in respect of proceedings in the county court; however, such a judgment or order could be enforced by a committal order: see CPR Sch 2 CCR Ord 29 r 1; and CIVIL PROCEDURE vol 12 (2009) PARA 1249.

6 See note 1 supra.

7 CPR Sch 1 RSC Ord 45 r 4(1)(a). See also CPR Sch 2 CCR Ord 26 r 16(2); and see CIVIL PROCEDURE vol 12 (2009) PARA 1248.

8 See note 4 supra.

9 CPR Sch 1 RSC Ord 45 r 4(1)(b). See also CPR Sch 2 CCR Ord 29 r 1; and see CIVIL PROCEDURE vol 12 (2009) PARAS 1248-1249.

10 See note 4 supra.

11 CPR Sch 1 RSC Ord 45 r 4(1)(c); and see CIVIL PROCEDURE vol 12 (2009) PARA 1248.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(a) In general/659. What constitutes trespass to goods.

## (C) TRESPASS TO GOODS

### (a) *In general*

#### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

## 659. What constitutes trespass to goods.

Trespass to goods is an unlawful disturbance of the possession<sup>1</sup> of goods by seizure<sup>2</sup> or removal<sup>3</sup>, or by a direct act causing damage to the goods<sup>4</sup>.

The subject matter of trespass to goods must be a personal chattel which is the subject of lawful possession<sup>5</sup>.

1 *Hesperides Hotels Ltd v Sermet* (1982) Times, 15 March, CA, per Lord Denning MR. As to what constitutes possession see PARAS 662-669 post; and PERSONAL PROPERTY vol 35 (Reissue) PARAS 1211-1226.

2 *Crozier v Cundey* (1827) 6 B & C 232. See also *Jones v Lewis* (1836) 7 C & P 343; *Hartley v Moxham* (1842) 3 QB 701; *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294; *Moore v Lambeth County Court Registrar* (No 2) [1970] 1 QB 560, [1970] 1 All ER 980, CA. As to trespass by illegal distress see DISTRESS vol 13 (2007 Reissue) PARAS 1076, 1094; and as to wrongful execution see CIVIL PROCEDURE vol 12 (2009) PARA 1375.

3 The technical term for a removal in trespass is 'asportation'; any unlawful removal, however slight, amounts to a trespass: *Kirk v Gregory*. Trespass lies for taking captive animals: see ANIMALS vol 2 (2008) PARA 710 et seq.

4 Any damage, however slight, is sufficient, for instance scratching the panel of a carriage: *Fouldes v Willoughby* (1841) 8 M & W 540 at 549 per Alderson B. It seems that there may be a trespass to goods by filling bottles: (see *William Leitch & Co Ltd v Leydon*, *AG Barr & Co Ltd v Macgeoghegan* [1931] AC 90, HL), or by attaching an immobilising device to a motor vehicle, without the consent of the owner: *Arthur v Anker* [1997] QB 564, [1996] 3 All ER 783, CA (where consent was found, by reason of the presence of notices warning that vehicles parked on the private land where the notices were displayed would be clamped; such consent extended not only to the otherwise tortious act of clamping the car, but to its remaining clamped and thus detained until a reasonable advertised charge was paid: see at 573 and 788 per Bingham MR). It may be that any deliberate, direct and unauthorised contact with the chattel qualifies as a trespass, even in the absence of damage: see *IRC v Rossminster Ltd* [1980] AC 952 at 1011, [1980] 1 All ER 80 at 93, HL, obiter per Lord Diplock (the act of handling a man's goods without his permission is *prima facie* tortious); *Hesperides Hotels Ltd v Sermet* (1982) Times, 15 March, CA, per Lord Denning MR, where the question was left open whether a person would be guilty of trespass by lying on a bed without authority; *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204 at 214-215, Aust HC, per Latham CJ; *Everitt v Martin* [1953] NZLR 298, where it was held that damage was necessary for a negligent touching but the question was left open as regards intentional touching. For examples of trespass to animals see *Wright v Ramscot* (1667) 1 Saund 84 (killing dog); *Anderson v Buckton* (1719) 1 Stra 192 (infecting cattle; but cf *Wright v Hetton Downs Co-operative Society* (1883) Cab & El 200); *Thompson v Berry* (1723) 1 Stra 551 (chasing bull); *Dye v Leatherdale and Simpson* (1769) 3 Wils 20 (taking hog); *Oxley v Watts* (1785) 1 Term Rep 12 (working stray horse); *Dand v Sexton* (1789) 3 Term Rep 37 (beating dog); *Carruthers v Hollis* (1838) 8 Ad & El 113 (driving sheep into highway); *Bunch v Kennington* (1841) 1 QB 679 (beating dog); *Ellis v Loftus Iron Co* (1874) LR 10 CP 10 (defendant's horse injuring plaintiff's mare). See also ANIMALS vol 2 (2008) PARAS 709, 715-716, 928. As to injury to animals impounded see the Animals Act 1971 s 7(6); and ANIMALS vol 2 (2008) PARA 758.

5 *Davis v Nest* (1833) 6 C & P 167; *Buron v Denman* (1848) 2 Exch 167. As to the possession of wild animals see *Kearry v Pattinson* [1939] 1 KB 471, [1939] 1 All ER 65; and see ANIMALS vol 2 (2008) PARAS 710 et seq, 779. As to corpses and human tissue see PARA 547 ante. For the purposes of the Torts (Interference with Goods) Act 1977, 'goods' includes all chattels personal other than things in action and money: see s 14. Share certificates are goods within this meaning: *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 699, [1998] 2 BCLC 659 at 686, CA, per Hobhouse LJ. Trespass lies for the removal of fixtures: see *Pitt v Shew* (1821) 4 B & Ald 206; *Boydell v M'Michael* (1834) 1 Cr M & R 177 at 179 per Parke B; *Beck v Denbigh* (1860) 6 Jur NS 998. As to trespass in respect of crops see PARA 512 ante. As to trespass in respect of turf which has been cut see *Cronin v Connor* [1913] 2 IR 119. As to various kinds of lawful possession other than ownership see PARAS 566 et seq ante, 663, 669 post. As to agents see generally AGENCY vol 1 (2008) PARAS 141-149. As to bailees see AUCTION vol 2(3) (Reissue) PARA 230; BAILMENT vol 3(1) (2005 Reissue) PARA 1 et seq; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 875-878. As to carriers see CARRIAGE AND CARRIERS vol 7 (2008) PARA 7 et seq. As to distress see DISTRESS. As to execution see CIVIL PROCEDURE vol 12 (2009) PARA 1265 et seq. As to lien see AUCTION vol 2(3) (Reissue) PARAS 224, 230; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 860-864; BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARAS 84, 90-91; LICENSING AND GAMBLING vol 67 (2008) PARA 213; LIEN vol 68 (2008) PARA 801 et seq; LEGAL PROFESSIONS vol 66 (2009) PARA 996 et seq. As to pledgees and pawnees see PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 1 et seq. As to receivers see RECEIVERS vol 39(2) (Reissue) PARAS 373-398. As to the master of a ship see SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 426-449. As to solicitors see LEGAL PROFESSIONS.

**UPDATE****542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

**659 What constitutes trespass to goods**

NOTE 4--The act of clamping a car is an act of trespass unless it can be shown that the owner has either consented to or willingly assumed the risk of his car being clamped: *Vine v Waltham Forest LBC* [2000] 4 All ER 169, CA.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(a) In general/660. Unintentional harm.

**660. Unintentional harm.**

If an act of trespass is intentional, it is no defence to show that the defendant honestly but mistakenly believed that he had the right to perform the act<sup>1</sup>. It may be that an action for trespass to goods also lies for purely negligent conduct causing injury to goods<sup>2</sup>. In such a case it appears that the onus of proving negligence rests upon the claimant<sup>3</sup>.

Trespass to goods will not lie where damage is caused through no fault on the part of the defendant<sup>4</sup>.

1 See *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294, where the defendants' employees seized the plaintiff's chattel in the belief that it was the defendants' property. See also *Colwill v Reeves* (1811) 2 Camp 575; *Moore v Lambeth County Court Registrar (No 2)* [1970] 1 QB 560 at 570, [1970] 1 All ER 980 at 984, CA, per Russell LJ, and at 572 and at 986 per Sachs LJ, where there was an excessive levy of distress by an officer of the court. As to defences see PARA 677 et seq post.

2 *Fowler v Lanning* [1959] 1 QB 426, [1959] 1 All ER 290; but cf *Letang v Cooper* [1965] 1 QB 232, [1964] 2 All ER 929, CA (alleged negligent trespass: see TORT vol 97 (2010) PARA 524) (not followed in *Venning v Chin* (1974) 10 SASR 299 (on appeal (1975) 49 ALJR 378, Aust HC)). See also *Everitt v Martin* [1953] NZLR 298; *Williams v Milotin* (1957) 97 CLR 465, Aust HC; *Long v Hepworth* [1968] 3 All ER 248, [1968] 1 WLR 1299. The Torts (Interference with Goods) Act 1977 s 11(1) (see PARA 680 post), in providing that contributory negligence is no defence in proceedings founded on intentional trespass to goods, might be seen as impliedly recognising that an action may lie for non-intentional trespass to goods.

3 *Fowler v Lanning* [1959] 1 QB 426 at 439, [1959] 1 All ER 290 at 297 (trespass to the person). But the contrary has been held in Australia and Canada: *McHale v Watson* (1964) 111 CLR 384, Aust HC; *Venning v Chin* (1974) 10 SASR 299 (on appeal (1975) 49 ALJR 378, Aust HC); *Bell Canada v Bannermount Ltd* [1973] 2 OR 811, 35 DLR (3d) 367, Ont CA.

4 *National Coal Board v JE Evans & Co (Cardiff) Ltd and Maberley Parker Ltd* [1951] 2 KB 861, [1951] 2 All ER 310, CA; *Fowler v Lanning* [1959] 1 QB 426, [1959] 1 All ER 290; cf *AVX Ltd v EGM Solders Ltd* (1982) Times, 7 July, where negligence was established.

**UPDATE****542-686 Wrongful Interference with Goods**

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Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(a) In general/661. Distinction between trespass and conversion.

### **661. Distinction between trespass and conversion.**

Trespass and conversion are both forms of wrongful interference with goods<sup>1</sup>. They are analogous torts, each of them arising out of an unlawful dealing with personal chattels; in neither action can the claimant succeed, unless he had, when the unlawful act was committed, the possession, or a right to the immediate possession, of the chattel unlawfully dealt with<sup>2</sup>. The gist of an act of trespass is an unlawful taking or removing or damaging of a personal chattel; the gist of an act of conversion is the wrongful conversion of a personal chattel to the defendant's use or to the use of some third person, the failure to deliver up the chattel when demanded, or the destroying or changing of the quality of the chattel<sup>3</sup>. An act of trespass may be complete by an unlawful taking without any conversion<sup>4</sup>, and an act may amount to conversion where there is no unlawful taking<sup>5</sup>. An act of trespass may be accompanied or followed by a conversion, in which case the owner of the chattel may sue in trespass or conversion, or in both<sup>6</sup>, or he may sue in trespass alone and may give evidence of the conversion in aggravation of the damages<sup>7</sup>. In an action of trespass the claimant may recover exemplary, aggravated or only nominal damages<sup>8</sup>. The same is true of an action for conversion<sup>9</sup>, but normally the damages recoverable for conversion are the value of the goods or of the claimant's interest in them<sup>10</sup>. As in conversion<sup>11</sup>, the person entitled to possession may have the right to elect whether to sue in tort for trespass or to bring a claim for money had and received<sup>12</sup>.

1 See the Torts (Interference with Goods) Act 1977 s 1(a) (conversion or trover), s 1(b) (trespass); and PARA 545 ante.

2 As to the requirement for possession or a right of possession in conversion see PARA 559 ante, and as to the requirement in trespass to goods see PARA 662 post.

3 As to the nature of conversion see PARA 548 et seq ante.

4 *Price v Helyar* (1828) 4 Bing 597; *Fouldes v Willoughby* (1841) 8 M & W 540.

5 *Wilson v Barker* (1833) 4 B & Ad 614, where it was held that A, who knowingly receives from B a chattel belonging to C which B has wrongfully seized, and who afterwards on demand refuses to give it up to C, may not be sued in trespass unless the chattel was seized to his use, but may be sued in conversion; *West v Nibbs* (1847) 4 CB 172, where it was held that a landlord retaining distrained goods, after acceptance of rent and expenses, was liable in conversion, but not in trespass.

6 *Hesperides Hotels Ltd v Muftizade* [1979] AC 508, [1978] 2 All ER 1168, HL; cf *Hesperides Hotels Ltd v Sermet* (1982) Times, 15 March, CA, per Lord Denning MR. See also the Civil Jurisdiction and Judgments Act 1982 s 30 (as amended); and CONFLICT OF LAWS vol 8(3) (Reissue) PARA 393. A recovery in trespass is a bar to an action in conversion for the same taking: *Putt v Roster* (1682) 2 Mod Rep 318. See further PARA 649 note 1 ante. As to compensation orders in criminal proceedings see PARA 682 post. As to limitation periods see PARA 652 ante.

7 *Pratt v Pratt* (1848) 2 Exch 413.

- 8 As to damages see PARA 671 post; and DAMAGES.
- 9 See PARA 615 ante.
- 10 See PARA 615 et seq ante.
- 11 See PARA 640 ante.
- 12 *Oughton v Seppings* (1830) 1 B & Ad 241. See also RESTITUTION vol 40(1) (2007 Reissue) PARAS 161-164; ESTOPPEL vol 16(2) (Reissue) PARA 962.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(b) Nature of Right of Possession Infringed/662. Possession or right to possession.

#### *(b) Nature of Right of Possession Infringed*

#### **662. Possession or right to possession.**

A claimant in a claim for trespass to goods must prove that, at the time when the unlawful act was committed, he had actual possession, or a right to the immediate possession, of the chattel in question<sup>1</sup>. If his right accrued subsequently to the unlawful act, he must prove that his right related back to the time of the act, and that the act was unlawful when it was committed<sup>2</sup>.

As against a wrongdoer any possession is sufficient<sup>3</sup>, provided that it is complete and unequivocal<sup>4</sup>.

1 *Ward v Macauley* (1791) 4 Term Rep 489; *Ashby v Minnitt* (1838) 8 Ad & El 121; *Forman v Dawes* (1841) Car & M 127; *Pritchard v Long* (1842) 9 M & W 666; *Johnson v Diprose* [1893] 1 QB 512, CA; *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294; cf *Hesperides Hotels Ltd v Muftizade* [1979] AC 508 at 538, [1978] 2 All ER 1168 at 1176, HL, per Lord Wilberforce, and at 542 and at 1183-1184 per Lord Fraser of Tullybelton, who expressed no concluded view on the matter. It has been held in Australia that an immediate right of possession will normally suffice to found an action for trespass to goods only when the act complained of constitutes a violation of the possession of the actual possessor, and therefore occurs without his consent: *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204, especially at 224-228, Aust HC, per Dixon J, citing Pollock and Wright's Possession in the Common Law 144-145. Where the purported purchaser of a car under a sale which was ineffective owing to the seller's lack of title left the vehicle with a garage for repairs in circumstances which did not give the garage a lien over the car, it was held that the wrongful taking of the car by representatives of the defendant (who wrongly thought that it was the defendant's property) was a trespass against the purported purchaser because, in the circumstances, he never lost possession of the car: *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294 (but it was no defence to show that, subsequently to the seizure, the car had been returned by the defendants to the rightful owners). However, the Torts (Interference with Goods) Act 1977 s 8 would now enable the defendant to plead *jus tertii*: see PARA 678 post. As to possession of goods see PARA 662 et seq post.

2 *Tharpe v Stallwood* (1843) 5 Man & G 760; *Re Goldburg (No 2), ex p Page* [1912] 1 KB 606; *Re Ashwell, ex p Salaman* [1912] 1 KB 390.

3 *Oughton v Seppings* (1830) 1 B & Ad 241; *Carter v Johnson* (1839) 2 Mood & R 263; *Jeffries v Great Western Rly Co* (1856) 5 E & B 802.

4 *Young v Hichens* (1844) 6 QB 606. A mere transient and equivocal possession is no ground for an action of trespass: *Peachey v Wing* (1826) 5 LJOSKB 55, where, on a dispute between two parties as to the right to a chattel of which neither had possession, one party snatched the chattel from the employee of the other in a scuffle to obtain possession, and it was held that the employee could not maintain trespass. As to possession of game see ANIMALS vol 2 (2008) PARAS 717-719.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(b) Nature of Right of Possession Infringed/663. Right of property.

### 663. Right of property.

The right of property in goods imports a right to the possession<sup>1</sup>, and where no one else is lawfully in possession the owner may sue in trespass even though he has no actual physical control over the goods<sup>2</sup>. Proof that a person has the property in a chattel is *prima facie* evidence that he is in possession<sup>3</sup>, and similarly, proof of possession is *prima facie* evidence of title<sup>4</sup>. When the possession is doubtful, it is attached by law to the title<sup>5</sup>. If a person has a property in a chattel at his election, by bringing an action of trespass in respect of the chattel he elects to take the chattel and is competent to sue<sup>6</sup>.

1 *Dunwich Corp v Sterry* (1831) 1 B & Ad 831: see PERSONAL PROPERTY vol 35 (Reissue) PARAS 1116-1117.

2 *Lotan v Cross* (1810) 2 Camp 464.

3 See PERSONAL PROPERTY vol 35 (Reissue) PARAS 1216, 1222.

4 See PERSONAL PROPERTY vol 35 (Reissue) PARA 1216.

5 *Thomas v Philips* (1836) 7 C & P 573.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(b) Nature of Right of Possession Infringed/664. Co-owner.

#### **664. Co-owner.**

Co-ownership is no defence to an action founded on trespass to goods<sup>1</sup> where the defendant, without the authority of the other co-owner: (1) destroys the goods, or disposes of them in a way giving a good title to the entire property in the goods, or otherwise does anything equivalent to the destruction of the other co-owner's interest in the goods<sup>2</sup>; or (2) purports to dispose of the goods in a way which would give a good title to the entire property in them if he was acting with the authority of all the co-owners<sup>3</sup>. These provisions do not affect the law concerning execution or enforcement of judgments, or concerning any form of distress<sup>4</sup>. Where the provisions do not apply, it appears that one co-owner may not sue another co-owner in trespass<sup>5</sup>.

1 For the meaning of 'goods' see PARA 545 text and note 6 ante.

2 Torts (Interference with Goods) Act 1977 s 10(1)(a). See also note 3 infra; and PARA 604 ante.

3 Ibid s 10(1)(b). Section 10(1) applies to conversion as well as to trespass: see PARA 604 ante. Some of the categories of conduct specified in the rules are clearly more appropriate to an action in trover or conversion than to trespass: see PARA 604 ante. As to the effect of co-ownership on an action in trespass to goods at common law see *Higgins v Thomas* (1846) 8 QB 908; *Mayhew v Herrick* (1849) 7 CB 229. As to co-ownership of personal property generally see PERSONAL PROPERTY vol 35 (Reissue) PARAS 1243-1248.

4 Torts (Interference with Goods) Act 1977 s 10(2). This provision is necessary because an officer acting in execution of judgment has a special property in goods seized by him which could make him liable as a co-owner if the goods were already in co-ownership between the judgment debtor and another: see CIVIL PROCEDURE vol 12 (2009) PARA 1295; SHERIFFS vol 42 (Reissue) PARA 1135.

5 See *Higgins v Thomas* (1846) 8 QB 908; *Mayhew v Herrick* (1849) 7 CB 229.

#### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(b) Nature of Right of Possession Infringed/665. Bailor and bailee.

#### **665. Bailor and bailee.**

An owner may not sue in trespass if he has parted with the right of possession, for instance by letting the goods on hire<sup>1</sup>; but an owner who gratuitously permits another person to use his goods may sue a third person in trespass for an injury done to the goods while they are so

used<sup>2</sup>. A bailee of goods<sup>3</sup> who is entitled to the exclusive possession of the goods (the bailor having no immediate right of possession), is the proper claimant in trespass<sup>4</sup>.

On a bailment of goods which does not exclude the right of the bailor to immediate possession, either the bailor or the bailee may sue a wrongdoer in trespass<sup>5</sup>. Thus where goods are in the custody of a carrier either the carrier or the owner of the goods may sue for a trespass committed in respect of them<sup>6</sup>.

A shopkeeper may sue for a trespass to goods sent to him on sale or return<sup>7</sup>.

The master of a ship was held to have sufficient possession to sue for a trespass to goods on board the ship<sup>8</sup>. The charterer of a ship does not have possession of it or its cargo unless the charterparty operates as a demise<sup>9</sup>.

An auctioneer who is entrusted with goods to sell, whether in a public auction room or on the premises of the owner of the goods, has sufficient possession of the goods to enable him to sue in trespass<sup>10</sup>.

1 *Ward v Macauley* (1791) 4 Term Rep 489. As to the rights of the owner of goods let on hire see PARA 605 ante; BAILMENT vol 3(1) (2005 Reissue) PARAS 58-62; CONSUMER CREDIT vol 9(1) (Reissue) PARAS 52-54.

2 *Lotan v Cross* (1810) 2 Camp 464. See also *Wooderman v Baldock* (1819) 8 Taunt 676. It appears that the act in question must be a wrong against the person in possession, and thus committed without that person's consent, in order for the owner out of possession to sue the third party wrongdoer in trespass: *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204, Aust HC, per Dixon J. A person does not lose his possession of goods by mixing them with those of another provided that they can still be distinguished: see *Colwill v Reeves* (1811) 2 Camp 575; and BAILMENT vol 3(1) (2005 Reissue) PARA 37.

3 As to the rights of the different classes of bailees generally see BAILMENT vol 3(1) (2005 Reissue) PARAS 1-5.

4 *Ward v Macauley* (1791) 4 Term Rep 489. As to the requirement for possession or a right to possession see PARA 662 ante. It seems that the bailor may sue for the damage to his reversion, if any, but it is not a claim of trespass: see BAILMENT vol 3(1) (2005 Reissue) PARAS 88-90.

5 *Rooth v Wilson* (1817) 1 B & Ald 59; *Nicolls v Bastard* (1835) 2 Cr M & R 659; *The Winkfield* [1902] P 42, CA; but note the qualification imposed by *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204, Aust HC, per Dixon J. Where a bailee at will breaks open a container and converts the goods it seems that he is liable to the bailor in trespass as well as in conversion for 'in all cases where a person to whom goods are delivered hath neither a general nor a special property, if he converts them to his own use, trespass will lie': *Hartop v Hoare* (1743), as reported in 3 Atk 44 at 46; cf *Lamprell v Markham* (1844) 2 LTOS 377; *Penfolds Wines Pty Ltd v Elliott* supra. As to the liability in trover of any bailee who does an act which amounts to a determination of the bailment see BAILMENT vol 3(1) (2005 Reissue) PARA 19.

6 *Ward v Macauley* (1791) 4 Term Rep 489 at 490; and see CARRIAGE AND CARRIERS vol 7 (2008) PARA 760; and cf PARA 663 ante.

7 *Colwill v Reeves* (1811) 2 Camp 575.

8 *Moore v Robinson* (1831) 2 B & Ad 817. But see now *The Jupiter (No 3)* [1927] P 122 at 131 per Hill J (affd [1927] P 250, CA); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 240. As to the rights of a master over cargo generally see CARRIAGE AND CARRIERS vol 7 (2008) PARA 479 et seq.

9 As to charterparty by demise see CARRIAGE AND CARRIERS vol 7 (2008) PARAS 210-212.

10 *Williams v Millington* (1788) 1 Hy Bl 81; *Robinson v Rutter* (1855) 4 E & B 954. See also AUCTION vol 2(3) (Reissue) PARA 230. However, an auctioneer who is entrusted with the sale of fixtures attached to the freehold which the purchaser is bound to detach and remove does not have the necessary possession to enable him to bring trespass for their removal: *Davis v Danks* (1849) 3 Exch 435. See also AUCTION vol 2(3) (Reissue) PARA 230.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(b) Nature of Right of Possession Infringed/666. Mortgagor and mortgagee.

### **666. Mortgagor and mortgagee.**

A mortgagee of a chattel may not sue in trespass unless he is in possession or has a right to immediate possession<sup>1</sup>. If a mortgagee of a chattel seizes the mortgaged chattel when he has no right to seize it, he may be sued in trespass by the mortgagor<sup>2</sup>. If a third person commits a trespass to a mortgaged chattel at a time when the mortgagee has no right to seize it, the mortgagor is the proper claimant<sup>3</sup>.

1 *Wheeler v Montefiore* (1841) 2 QB 133; *Brierly v Kendall* (1852) 17 QB 937; *White v Morris* (1852) 11 CB 1015; *Toms v Wilson* (1863) 4 B & S 442, Ex Ch; *Massey v Sladen* (1868) LR 4 Exch 13. As to the immediate right to possession see *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204; and PARAS 662, 665 ante.

2 *Brierly v Kendall* (1852) 17 QB 937: see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1798.

3 *Brierly v Kendall* (1852) 17 QB 937; *Toms v Wilson* (1863) 4 B & S 442. Cf MORTGAGE vol 77 (2010) PARA 406.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(b) Nature of Right of Possession Infringed/667. Fixtures.

### **667. Fixtures.**

If premises are demised to a tenant, the tenant may maintain trespass against a wrongdoer who severs and takes away fixtures attached to the freehold<sup>1</sup>. However, if timber is cut down, the right to the possession of the timber vests at once in the reversioner, and he alone may sue a wrongdoer who takes the timber away<sup>2</sup>.

1 *Boydell v M'Michael* (1834) 1 Cr M & R 177 at 179.

2 *Evans v Evans* (1810) 2 Camp 491; *Boydell v M'Michael* (1834) 1 Cr M & R 177. This is so even if there is no express reservation to the landlord of the timber: *Ward v Andrews* (1772) 2 Chit 636.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(b) Nature of Right of Possession Infringed/668. Tombstones.

### **668. Tombstones.**

The property in a tombstone erected in a churchyard or cemetery remains in the person who erected it, and the person in whom the property is vested may maintain trespass against a person who wrongfully removes or defaces the tombstone<sup>1</sup>.

1 See ECCLESIASTICAL LAW. The owner of a pew may maintain trespass against a wrongdoer for breaking it: *Dawtric v Dee* (1620) 2 Roll Rep 139. See also PARA 512 note 2 ante.

## **UPDATE**

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(b) Nature of Right of Possession Infringed/669. Entry under unenforceable contract.

### **669. Entry under unenforceable contract.**

A person who enters on land under a contract which is unenforceable because it is not evidenced by writing<sup>1</sup>, and who places his goods on the land, may justify his possession on the ground that the contract gave him a licence to enter, and may, if his goods on the land are seized, sue the wrongdoer in trespass<sup>2</sup>.

1 As to contracts required to be in writing see CONTRACT vol 9(1) (Reissue) PARAS 623-628; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 79; SALE OF LAND vol 42 (Reissue) PARAS 29-40.

2 *Crosby v Wadsworth* (1805) 6 East 602. See also *Maddison v Alderson* (1883) 8 App Cas 467 at 474, HL; contra *Carrington v Roots* (1837) 2 M & W 248 (distinguished in *Britain v Rossiter* (1879) 11 QBD 123, CA). As to the determination of the licence in such a case see *Crosby v Wadsworth* *supra*; and PARA 530 ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(c) Remedies/670. Self-help.

#### (c) Remedies

##### 670. Self-help.

If one person wrongfully seizes another's goods the owner may resist the seizure and may use such force as is reasonably necessary<sup>1</sup>; if the goods are wrongfully removed or are in the wrongful possession of someone else, the owner may retake them and may use force if necessary, and may enter on the land of the wrongdoer for the purpose of recovering the goods<sup>2</sup>.

1 *Blades v Higgs* (1861) 10 CBNS 713 (subsequent proceedings (1863) 12 CBNS 501; (1863) 13 CBNS 824, Ex Ch; (1865) 20 CBNS 214, HL). See also *Webb v Beavan* (1844) 6 Man & G 1055; 3 Bl Com (14th Edn) 4; and see DISTRESS. As to seizure under a bill of sale see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1788-1793. The property in current coin and in negotiable securities passes to a holder in good faith, and the original owner has no right to retake them: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 1400-1404, 1503-1504; PERSONAL PROPERTY vol 35 (Reissue) PARA 1233. For cases where an innocent purchaser for value obtains a title to goods see PARAS 551, 555 ante; AGENCY vol 1 (2008) PARA 148.

2 *Blades v Higgs* (1861) 10 CBNS 713 (subsequent proceedings (1863) 12 CBNS 501; (1863) 13 CBNS 824; Ex Ch; (1865) 20 CBNS 214, HL); cf *Capital Finance Co Ltd v Bray* [1964] 1 All ER 603, [1964] 1 WLR 323; and see *Webb v Beavan* (1844) 6 Man & G 1055; *Anthony v Haney and Harding* (1832) 8 Bing 186; *Whatford v Carty* (1960) Times, 29 October. See also *Austin v Dowling* (1870) LR 5 CP 534.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(c) Remedies/671. Damages.

## 671. Damages.

In a claim for trespass to goods the claimant is entitled to recover damages<sup>1</sup> for the resultant deprivation<sup>2</sup>, destruction or depreciation affecting the goods; he may also, subject to the appropriate rules of remoteness of loss, recover damages for loss of profits or loss of use sustained by him<sup>3</sup>. In the absence of special damage, he may recover general or nominal damages<sup>4</sup>. Exemplary damages and aggravated damages may be awarded in certain instances<sup>5</sup>.

If a bailee of goods sues a third person for trespass, and if the third person does not plead in defence the *jus tertii* of the owner<sup>6</sup>, the bailee may recover damages as if he were the owner, but must account to the owner for what he recovers beyond the value of his own interest, and a judgment in trespass obtained by the bailee of goods is a bar to an action by the bailor, and vice versa<sup>7</sup>.

If a mortgagor of goods recovers judgment in trespass against the mortgagee for a premature taking of possession, the measure of damages is the value of the mortgagor's interest<sup>8</sup>.

In certain circumstances allowances may be made to persons who have improved the goods which are the subject of the action, and to purported purchasers of the improved goods; the allowance is for the extent to which the value of the goods is attributable to the improvement<sup>9</sup>.

1 See DAMAGES vol 12(1) (Reissue) PARA 860. The principles governing remoteness of loss in trespass appear likely to coincide with those governing remoteness of loss in conversion, with the result that whereas an inadvertent trespass will attract a similar rule of remoteness to that in tort for negligence, a deliberate trespass will attract a similar rule of remoteness to that in tort for fraud (namely, one founded on the directness rather than the foreseeability of the loss): see PARA 630 note 3 ante. In a case of partial damage falling short of destruction, the claimant may recover the cost repair or reinstatement, rather than the mere depreciation in value (where lower), if repair or reinstatement represents a reasonable remedial option in all the circumstances: see DAMAGES vol 12(1) (Reissue) PARAS 860, 981.

2 *The Mediana* [1900] AC 113, HL (full value in cases of total deprivation).

3 See DAMAGES vol 12(1) (Reissue) PARAS 860, 862, 867; and *Page v Rattcliff* (1832) 1 LJCP 57. As to the measure of damages where the claimant's goods have been taken in wrongful execution, or upon a judgment afterwards set aside see CIVIL PROCEDURE; DISTRESS vol 13 (2007 Reissue) PARA 1090 et seq. As to damages for trespass by the defendant's cattle see DAMAGES vol 12(1) (Reissue) PARA 871. Judgment in replevin for damage to goods is a bar to a claim for trespass to the goods: see DAMAGES vol 12(1) (Reissue) PARA 860; DISTRESS vol 13 (2007 Reissue) PARAS 1081, 1087. As to the effect of compensation orders on subsequent awards of damages in civil proceedings see PARA 683 post.

4 See DAMAGES vol 12(1) (Reissue) PARAS 812-813, 851, 853, 860.

5 See *IRC v Rossminster* [1980] AC 952 at 1000-1001, [1980] 1 All ER 80 at 85, HL, per Lord Wilberforce, and at 1013 and at 94 per Lord Diplock; and DAMAGES vol 12(1) (Reissue) PARAS 1114-1117. As to the measure of damages for the temporary loss of use of a chattel caused by trespass see DAMAGES vol 12(1) (Reissue) PARAS 863-865; and cf PARA 615 ante (damages in conversion). See also *White v WP Brown Ltd* (1983) Times, 29 September, county court (damages of £775 for trespass to plaintiff's handbag by store detective who snatched it in unjustified attempt to search it).

6 As to *jus tertii* see the Torts (Interference with Goods) Act 1977 s 8; and PARAS 640 ante, 678 post.

7 See BAILMENT vol 3(1) (2005 Reissue) PARAS 89-90; DAMAGES vol 12(1) (Reissue) PARA 867.

8 See MORTGAGE vol 77 (2010) PARA 406. See also DAMAGES vol 12(1) (Reissue) PARA 867.

9 See the Torts (Interference with Goods) Act 1977 s 6; and PARA 623 ante. For the rules as to allowances for the improvement of goods, which are applicable to trespass to goods as well as to conversion, see PARAS 623-624 ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(c) Remedies/672. Form of judgment where goods are detained.

#### 672. Form of judgment where goods are detained.

In proceedings for trespass to goods<sup>1</sup> against a person who is in possession or control of the goods, the following relief may be given, so far as appropriate<sup>2</sup>:

- 25 (1) an order for delivery of the goods, and for payment of any consequential damages<sup>3</sup>; or
- 26 (2) an order for delivery of the goods, but giving the defendant the alternative of paying damages by reference to the value of the goods, together in either alternative with payment of any consequential damages<sup>4</sup>; or
- 27 (3) damages<sup>5</sup>.

1 This provision also applies to other proceedings for wrongful interference, ie conversion of goods, negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 s 3(1). As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 ante.

2 Ibid s 3(1).

3 Ibid s 3(2)(a). See also note 5 infra.

4 Ibid s 3(2)(b). See also note 5 infra.

5 Ibid s 3(2)(c). As to rules concerning the form of judgment, which are applicable to trespass to goods as well as to conversion see further PARA 653 et seq ante. As to damages see PARA 671 ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(c) Remedies/673. Interim relief where goods are detained.

### **673. Interim relief where goods are detained.**

On the application of any party to a cause or matter, the court may make an order<sup>1</sup> for the delivery up of any goods which are the subject matter of the cause or matter or as to which any question may arise in it<sup>2</sup>. Delivery must be, as the order may provide, to the claimant or to a person appointed by the court for the purpose, and must be on such terms and conditions as may be specified in the order<sup>3</sup>.

1 Ie an order under the Torts (Interference with Goods) Act 1977 s 4 (as amended). The power to make an order is limited to proceedings for wrongful interference: see s 4(1), (2). For the meaning of 'wrongful interference' see PARA 545 text and notes 2-5 ante. As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 ante.

2 See CPR 25.1(1)(e). See also note 3 infra. As to the CPR see CIVIL PROCEDURE.

3 Torts (Interference with Goods) Act 1977 s 4(3). As to rules concerning interlocutory relief, which are applicable to trespass to goods as well as to conversion see further PARA 654 ante.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(c) Remedies/674. Injunction and declaration.

### **674. Injunction and declaration.**

Apart from the relief already discussed<sup>1</sup>, the claimant in a claim for trespass to goods, in a proper case, and in addition to or substitution for damages, may obtain an injunction to prevent the continuance or repetition of the wrongful act, or may obtain a declaration that the defendant was a trespasser in committing the act complained of<sup>2</sup>.

1 As to such relief see PARAS 672-673 ante.

2 *The Tubantia* [1924] P 78. As to the effect of a statute providing a particular remedy on the court's power to grant injunctions and declarations see CIVIL PROCEDURE vol 11 (2009) PARA 351; and JUDICIAL REVIEW vol 61 (2010) PARA 716 et seq. As to injunctions in relation to trespass to land see TORT vol 97 (2010) PARA 590.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(c) Remedies/675. Concurrent claims.

### **675. Concurrent claims.**

Where goods are the subject of two or more claims for trespass to goods<sup>1</sup>, whether or not the claims are founded on the same wrongful act, and whether or not any of the claims relates also to other goods, the statutory provisions that apply are the same as those discussed in relation to goods that are the subject of two or more claims for conversion<sup>2</sup>.

1 This provision also applies to other proceedings for wrongful interference, ie conversion of goods, negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 s 9(1). As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 ante.

2 The statutory provisions referred to are those contained in *ibid* s 9 (as amended): see PARA 614 ante.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(c) Remedies/676. Double liability.

### **676. Double liability.**

In proceedings for trespass to goods<sup>1</sup> to which any two or more claimants are parties, the relief must be such as to avoid double liability<sup>2</sup> of the wrongdoer as between those claimants<sup>3</sup>.

1 This provision also applies to other proceedings for wrongful interference, ie conversion of goods (also called trover), negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods: see the Torts (Interference with Goods) Act 1977 s 7(1). As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 ante.

2 For the meaning of 'double liability' see *ibid* s 7(1); and PARA 637 ante.

3 *Ibid* s 7(2). For the rules concerning the avoidance of double liability, which are applicable to trespass to goods as well as to conversion, see further PARA 637 ante.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(d) Defences/677. Claim of right.

#### (d) Defences

##### 677. Claim of right.

In a claim of trespass to goods the defendant may plead<sup>1</sup> that the goods belong to him, or that they were not, at the time of the alleged trespass, the property<sup>2</sup> of, or in the possession of, the claimant<sup>3</sup>.

If a person in possession sues in trespass, the defendant may be entitled to set up as a defence the right of a third person under whom he does not claim, provided that he does so in accordance with rules of court<sup>4</sup>; if the claimant relies on a mere right of possession<sup>5</sup>, the defendant may also set up the right of that third person<sup>6</sup>.

It is no defence to a claim of trespass that the defendant took the claimant's goods in ignorance that they were the claimant's, or in the belief that they belonged to a third person, even if the claimant's goods were mixed with those of the third person, provided that they can be distinguished and identified<sup>7</sup>.

1 As to pleading generally see CIVIL PROCEDURE. Since the enactment of the CPR, pleadings are now known as statements of case: see CIVIL PROCEDURE.

2 This defence is available only where the defendant was in possession at the time of the alleged trespass.

3 *Ashby v Minnitt* (1838) 8 Ad & El 121.

4 See the Torts (Interference with Goods) Act 1977 s 8(1); and PARAS 644 ante, 678 post. At common law (and in cases where s 8(1) is inapplicable) the defendant could not, other than in exceptional cases, plead the *jus tertii* against a claimant in possession: see PARA 678 note 4 post; and BAILMENT vol 3(1) (2005 Reissue) PARAS 82, 89. It is uncertain whether these common law exceptions survive the enactment of the Torts (Interference with Goods) Act 1977: see *de Franco v Metropolitan Police Comr* (1987) Times, 8 May, CA, where the point was left open.

5 As to this qualification to sue in trespass see PARA 662 ante.

6 *Leake v Loveday* (1842) 4 Man & G 972; *Gadsden v Barrow* (1854) 9 Exch 514; *Richards v Jenkins* (1887) 18 QBD 451, CA. In this situation it appears that the defendant could always set up the right of a third person as proof that the claimant lacked the necessary qualification to sue in trespass; accordingly, the position in this respect, seems largely unaltered by the Torts (Interference with Goods) Act 1977 s 8(1). Cf *Chabba Corp'n Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC (claimant in conversion showing immediate right to possession can recover full value of chattel converted, not mere lesser value of his personal interest). See also PARAS 644 ante, 678 post.

7 *Colwill v Reeves* (1811) 2 Camp 575. See also *Wyatt v White* (1860) 5 H & N 371; *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294; and PARA 660 ante.

**UPDATE****542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(d) Defences/678. *Jus tertii*.

**678. *Jus tertii*.**

The defendant in an action for trespass to goods<sup>1</sup> is entitled to show, in accordance with rules of court<sup>2</sup>, that a third person has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff, or in right of which he sues<sup>3</sup>. Any rule of law to the contrary is abolished<sup>4</sup>.

1 This provision applies also to other proceedings for wrongful interference with goods: see the Torts (Interference with Goods) Act 1977 s 8(1). As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 ante. Since the enactment of the CPR, actions are now known as claims: see CIVIL PROCEDURE vol 11 (2009) PARA 18.

2 See *ibid* s 8(2), (3); and PARA 644 ante.

3 *Ibid* s 8(1); and see PARA 644 ante. Since the enactment of the CPR, plaintiffs are now known as claimants: see CIVIL PROCEDURE.

4 *Ibid* s 8(1). At common law a claimant relying on possession could recover the full value of the chattel, or damages for the full measure of its injury, irrespective of his lack of title to the goods or of any liability on his part to another party: *Carter v Johnson* (1839) 2 Mood & R 263; *Nelson v Cherrill* (1832) 8 Bing 316; *Jeffries v Great Western Rly Co* (1856) 5 E & B 802; *Haggan v Pasley* (1878) 2 LR Ir 573; *Glenwood Lumber Co Ltd v Phillips* [1904] AC 405 at 410, PC; *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294. Further, liability was not mitigated by the fact that the defendant had, subsequently to his dispossession of the plaintiff, returned the goods to the true owner: *Wilson v Lombank Ltd* supra. See also PARA 644 ante. The position with regard to a claimant who relied in a claim for trespass to goods upon a mere immediate right to possession was less certain, but it appears that at common law he could recover damages only to the extent of his interest in the goods and could be required to establish his title: *Leake v Loveday* (1842) 4 Man & G 972; *Gadsden v Barrow* (1854) 9 Exch 514; *Richards v Jenkins* (1887) 18 QBD 451, CA; cf *Bloxam v Hubbard* (1804) 5 East 407; *The Winkfield* [1902] P 42, CA; *Wilson v Lombank Ltd* supra, where the plaintiff was held to have remained in possession throughout, although his car was delivered to a garage for repairs, as the garage had no lien over it. It is assumed that these principles survive in cases where reliance is not placed upon the Torts (Interference with Goods) Act 1977 s 8, but their survival where the claimant relies on an immediate right to possession is doubtful. See further PARA 677 ante; and Palmer 'Possessory Title' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) Ch 3 p 63 et seq.

**UPDATE****542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain

persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(d) Defences/679. Self-defence.

### **679. Self-defence.**

An act which otherwise would be a trespass to goods may be justified on the ground that it was reasonably necessary for the defence of the person or property of the defendant or of someone whom, or whose property, the defendant is bound or entitled to protect<sup>1</sup>.

1 3 Bl Com (14th Edn) 4; *Scott v Shepherd* (1773) 2 Wm Bl 892; *Handcock v Baker* (1800) 2 Bos & P 260; *Kirk v Gregory* (1876) 1 ExD 55; *Cope v Sharpe (No 2)* [1912] 1 KB 496, CA; *Kirby v Chessum* (1914) 79 JP 81, CA. See also TORT vol 97 (2010) PARA 581. As to the killing of dogs in defence of persons or property see ANIMALS vol 2 (2008) PARAS 928-930. As to agency of necessity see AGENCY vol 1 (2008) PARA 24.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(d) Defences/680. Contributory negligence.

### **680. Contributory negligence.**

Contributory negligence is no defence in proceedings founded on intentional trespass to goods<sup>1</sup>.

1 Torts (Interference with Goods) Act 1977 s 11(1). The rule also applies to proceedings founded on conversion: see PARA 639 ante. As to unintentional trespass see PARA 660 ante.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(d) Defences/681. Other defences.

## 681. Other defences.

In a claim for trespass to goods the defendant may plead as a defence that the act complained of was done by the leave and licence of the claimant<sup>1</sup>, or in the exercise of a legal right<sup>2</sup>, or in the execution of legal process<sup>3</sup>, or in the levying of a distress<sup>4</sup>, or was involuntary and accidental<sup>5</sup>, or was reasonably believed to be necessary for the protection of the chattel<sup>6</sup>, or was caused by the claimant's own wrongful act or default<sup>7</sup>, or that the cause of action did not arise within the statutory period of limitation<sup>8</sup>.

1 See TORT vol 97 (2010) PARA 580. It is possible, where the claimant relies on a mere immediate right to possession, that the leave and licence of the person in possession will afford a sufficient defence: see PARA 662 note 1 ante.

2 Ie as under statutory authority (*De Gondouin v Lewis* (1839) 10 Ad & El 117; *Jacobsohn v Blake* (1844) 6 Man & G 919: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 191), or for the purpose of enforcing a private right, such as a right of lien (*Richards v Symons* (1845) 8 QB 90), or the right of the grantee of a liberty to seize wreck (*Dunwich Corp v Sterry* (1831) 1 B & Ad 831 at 845), or the right of an occupier of land to remove an obstruction (*Slater v Swann* (1730) 2 Stra 872). See also note 7 infra. As to an act of state as a defence see FOREIGN RELATIONS LAW vol 18(2) (Reissue) PARA 615.

3 See CIVIL PROCEDURE. Trespass did not lie against an official who seized goods under the former writ of extent: see *Pridgeon v Mellor* (1912) 28 TLR 261. As to seizure of goods under a magistrate's warrant see CIVIL PROCEDURE. As to the burden of establishing whether a seizure of documents by an officer of the revenue board was within the officer's authority see *IRC v Rossmminster Ltd* [1980] AC 952 at 1006-1007, [1980] 1 All ER 80 at 89, HL, per Viscount Dilhorne, at 1011 and 1012-1013 and at 93-94 per Lord Diplock, at 1017 and at 97-98 per Lord Salmon, and at 1024, 1026-1027 and at 103-105 per Lord Scarman.

4 See DISTRESS. Cf *Arthur v Anker* [1997] QB 564, [1996] 3 All ER 783, CA (wheel clamping of vehicle parked without occupier's consent on private land; defence of distress damage feasant not available to occupier in response to claim for wrongful interference with vehicle). The right to seize and detain animals by way of distress damage feasant was abolished by the Animals Act 1971 s 7(1): see ANIMALS vol 2 (2008) PARAS 758 et seq, 782. See also TORT vol 97 (2010) PARA 588. A person who distrained animals damage feasant could become a trespasser ab initio by using such animals: see ANIMALS vol 2 (2008) PARAS 709, 758; *Dye v Leatherdale and Simpson* (1769) 3 Wils 20; *Oxley v Watts* (1785) 1 Term Rep 12.

5 *Davis v Saunders* (1770) 2 Chit 639; *Wakeman v Robinson* (1823) 1 Bing 213; *Goodman v Taylor* (1832) 5 C & P 410; *Carstairs v Taylor* (1871) LR 6 Exch 217; *National Coal Board v JE Evans & Co (Cardiff) Ltd and Maberley Parker Ltd* [1951] 2 KB 861, [1951] 2 All ER 310, CA. Cf *Wyatt v White* (1860) 5 H & N 371. This defence need not, it seems, be specially pleaded.

6 *Kirk v Gregory* (1876) 1 ExD 55.

7 *Knapp v Salsbury* (1810) 2 Camp 500; *Hall v Fearnley* (1842) 3 QB 919. If a chattel is unlawfully on someone else's land, the person in possession of the land may remove the chattel to some place within reasonable distance: *Holding v Pigott* (1831) 7 Bing 465; *Drewell v Towler* (1832) 3 B & Ad 735; *Rea v Sheward* (1837) 2 M & W 424; *Ackland v Lutley* (1839) 9 Ad & El 879; *Pratt v Pratt* (1848) 2 Exch 413; *Melling v Leak* (1855) 16 CB 652; *National Coal Board v JE Evans & Co (Cardiff) Ltd and Maberley Parker Ltd* [1951] 2 KB 861 at 879, [1951] 2 All ER 310 at 317, CA, per Singleton LJ; *Arthur v Anker* [1997] QB 564, [1996] 3 All ER 783, CA. If cattle trespass on a person's land, he may drive them out; before distress damage feasant was abolished by the Animals Act 1971 s 7(1), he was not obliged to distrain them (*Tyrringham's Case* (1584) 4 Co Rep 36b); and he may, it seems, drive them onto a highway, except where the cattle have trespassed owing to his own default in repairing hedges which he was bound to repair; in such a case he must drive them back on to the land from which they came (*Carruthers v Hollis* (1838) 8 Ad & El 113).

8 The limitation period is six years: see the Limitation Act 1980 s 2. See also LIMITATION PERIODS vol 68 (2008) PARA 993.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(d) Defences/682. Compensation orders in criminal proceedings.

### 682. Compensation orders in criminal proceedings.

A court before which a person is convicted of an offence, instead of or in addition to dealing with him in any other way, may<sup>1</sup> make a compensation order requiring him to pay compensation for any personal injury, loss or damage<sup>2</sup> resulting from that offence or any other offence taken into consideration by that court in determining sentence<sup>3</sup>. The compensation must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the accused or the prosecutor<sup>4</sup>. However, compensation ordered by a magistrates' court in respect of any offence of which the court has convicted the offender must not exceed £5,000<sup>5</sup>.

The court may make an order for the convicted person to make payments for funeral expenses or bereavement in respect of death<sup>6</sup> resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road<sup>7</sup>. In determining whether to make a compensation order against a person, and in determining the amount to be paid by him under it, the court must have regard to his means so far as they appear or are known to the court<sup>8</sup>.

1 On application or otherwise: Powers of Criminal Courts Act 1973 s 35(1) (s 35(1) substituted by the Criminal Justice Act 1982 s 67). But see *R v Kneeshaw* [1975] QB 57, [1974] 1 All ER 896, CA. See also note 4 infra.

2 On an offence under the Theft Act 1968, where the property is recovered, any damage to the property that occurred while it was out of the owner's possession must be treated as having resulted from the offence, however and by whomsoever the damage was caused: Powers of Criminal Courts Act 1973 s 35(2). See also *R v Cadamarteri* [1977] Crim LR 236, (1976) 120 Sol Jo 856, CA, where a stolen car was partially dismantled but was returned together with the dismantled pieces and it was held there was no basis for a compensation order as there had been no loss and there was no evidence of a difference in value. See also *R v Ahmad* [1991] Crim LR 921, 13 Cr App Rep (S) 212, CA (damage to a stolen car (driven by a third party) was treated as resulting from the offence, but the contents of the car, missing when the car was recovered, could not be so treated).

3 Powers of Criminal Courts Act 1973 s 35(1) (as substituted: see note 1 supra). It must be remembered by courts considering compensation orders that the civil remedy for damages still exists; the order is a quick and simple way for dealing with the claim in simple cases: *R v Daly* [1974] 1 All ER 290, [1974] 1 WLR 133, CA; *R v Inwood* (1974) 60 Cr App Rep 70 at 73, CA. The order must be related to a specific offence in the indictment or taken into consideration and to personal injury, loss or damage suffered by a particular person as a result of that offence: *R v Oddy* [1974] 2 All ER 666, [1974] 1 WLR 1212, CA. See also *Hammertons Cars Ltd v Redbridge London Borough* [1974] 2 All ER 216, [1974] 1 WLR 484, DC, where an order for a sum representing one victim's legal costs in respect of the same loss was quashed; *Berkeley v Orchard* [1975] Crim LR 225, DC, where it was held that injury from taking a controlled drug was not injury resulting from the offence of unlawful possession of the drug. Where compensation is awarded in respect of numerous offences, there should be a separate order for each sum in respect of each offence: *R v Inwood* supra. See also *R v Corbett* [1992] Crim LR 833, 14 Cr App

Rep (S) 101, CA. Although some causal connection between the offence and the personal injury is required, it is not necessary that the offence be the sole cause. Where the offender has denied that particular items were stolen, the court should not make an order unless an application is made and the applicant is prepared to adduce evidence that the items had been stolen: *R v Kneeshaw* [1975] QB 57, [1974] 1 All ER 896, CA. When committing an offender for sentence, a magistrates' court should not make an order but should leave questions associated with sentence to be dealt with by the Crown Court: *R v Brogan* [1975] 1 All ER 879, [1975] 1 WLR 393, CA. A court has power to make a joint and several order against joint offenders, but such an order should not be made if substantial justice can be achieved by orders made severally: *R v Grundy, R v Moorhouse* [1974] 1 All ER 292, [1974] 1 WLR 139, CA. Where two or more persons are jointly convicted the order should generally require them to pay the amount awarded in equal proportions; and where there are a number of claimants the amount awarded should normally be apportioned on a pro rata basis if there are insufficient funds to meet each claim in full: *R v Amey, R v James* [1983] 1 All ER 865, [1983] 1 WLR 345, CA. Where one of several co-defendants does not have the means to pay a compensation order, it is not appropriate to make an order against him: see *R v Bagga* [1990] Crim LR 128, (1989) 11 Cr App Rep (S) 497, CA, where the value of the orders against the other co-defendants remained unchanged. There is no jurisdiction to make a compensation order if there is no evidence of damage: *R v Sharkey* [1976] Crim LR 388, (1976) 120 Sol Jo 95, CA. The court has power to include an amount by way of interest in the order: *R v Schofield* [1978] 2 All ER 705, [1978] 1 WLR 979, CA. Note that the right to compensation has been held to survive the death of the complainant: *Bury Magistrates v Holt* [1996] COD 360; *Holt v DPP* [1996] Crim LR 524, 2 Cr App Rep (S) 314.

As to suspension of compensation orders in the event of an appeal see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 389. A compensation order is not an order made on conviction for the purposes of an appeal from a magistrates' court to the Crown Court: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1980. An order made in respect of an offence taken into consideration: (1) ceases to have effect on a successful appeal against the conviction; (2) may be appealed against as if it were part of the sentence imposed: Powers of Criminal Courts Act 1973 s 36(5) (s 36 substituted by the Criminal Justice Act 1988 s 105); and see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 375.

4 Powers of Criminal Courts Act 1973 s 35(1A) (added by the Criminal Justice Act 1982 s 67). The court must not order more compensation than the actual loss sustained by the victim: *R v Maynard* [1983] Crim LR 821, CA. The order may include an amount for anxiety and distress which is directly caused by the defendant's offence: *Bond v Chief Constable of Kent* [1983] 1 All ER 456, [1983] 1 WLR 40, DC. See also *R v Amey, R v James* [1983] 1 All ER 865, [1983] 1 WLR 345, CA, cited in note 3 supra. But the courts have declined to rule on the question of whether there can be an award of compensation for distress to a bystander: *R v Vaughan* [1990] Crim LR 443, 12 Cr App Rep (S) 46, CA. An order should not be made unless the figure is either agreed or proved: *R v Vivian* [1979] 1 All ER 48, [1979] 1 WLR 291, CA; *R v Watson* [1991] Crim LR 307, (1990) 12 Cr App Rep (S) 508, CA.

5 Magistrates' Courts Act 1980 s 40(1) (substituted by the Criminal Justice Act 1991 s 17(3), Sch 4 Pt 1). As to calculating the amount of compensation which may be ordered: see the Magistrates' Courts Act 1980 s 40(1) (as so substituted); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 375. At any time before a compensation order has been complied with or fully complied with, the magistrates' court having functions in relation to its enforcement may, on the application of the person against whom it was made, discharge the order or reduce the amount which remains to be paid if it appears to the court: (1) that the injury, loss or damage in respect of which the order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or (2) where the order was made in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or (3) that the means of the person against whom the order was made are insufficient to satisfy in full both the order and a confiscation order under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended) made against him in the same proceedings; or (4) that the person against whom the order was made has suffered a substantial reduction in his means which was unexpected at the time when the compensation order was made, and that his means seem unlikely to increase for a considerable period: Powers of Criminal Courts Act 1973 s 37(a)-(d) (substituted by the Criminal Justice Act 1988 s 105); and see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 379. See also *R v Palmer* [1994] Crim LR 228, 15 Cr App Rep (S) 550.

Any sum ordered to be paid under a compensation order is treated for the purposes of enforcement as if it had been adjudged to be paid on a conviction by a magistrates' court: Administration of Justice Act 1970 s 41(1), Sch 9 Pt I para 10 (substituted by the Powers of Criminal Courts Act 1973 s 56(1), Sch 5 para 40). Sums due under a compensation order are also enforceable by the High Court or a county court: see the Administration of Justice Act 1970 s 41(3), Sch 9 Pt I para 10 (as so substituted).

The Powers of Criminal Courts Act 1973 s 37(b) (as originally enacted) provides no ground for the proposition that a compensation order is appropriate when it is clear that the property would be returned to the owner immediately the trial is over: *R v Cadamateri* (1976) 120 Sol Jo 856, CA. For guidelines as to the enforcement of orders by the Crown Court see *R v Bunce* (1977) 66 Cr App Rep 109, CA.

6 In the case of death, compensation may be payable under the Criminal Injuries Compensation Scheme: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2033 et seq.

7 Powers of Criminal Courts Act 1973 s 35(1) (as substituted (see note 1 *supra*); and amended by the Criminal Justice Act 1988 s 104). See also s 35(3) (substituted by the Criminal Justice Act 1988 s 104). See also *Quigley v Stokes* [1977] 2 All ER 317, [1977] 1 WLR 434, DC, where a stolen car caused damage to third persons' cars and it was held that although a compensation order could be made in respect of damage to the stolen car, it could not be made in respect of the third persons' cars.

8 Powers of Criminal Courts Act 1973 s 35(4). Where the court considers that it would be appropriate both to impose a fine and to make a compensation order, but that the offender has insufficient means to pay both an appropriate fine and appropriate compensation, the court must give preference to compensation (although it may impose a fine as well): s 35(4A) (added by the Criminal Justice Act 1982 s 67). See also *R v Hunt* [1983] Crim LR 270, CA. See also *R v Holmes* [1991] BCC 394, (1992) 13 Cr App Rep (S) 29, CA, in which it was held that a sentencer imposing a compensation order should be careful not to reduce or inhibit the defendant's means to pay the order. In this case, if it had been appropriate to make a compensation order, it would have been inappropriate to also make an order disqualifying the defendant from acting as a director of a company.

## UPDATE

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### **682 Compensation orders in criminal proceedings**

TEXT AND NOTES--1973 Act (as amended) consolidated in the Powers of Criminal Courts (Sentencing) Act 2000. See CRIMINAL LAW, EVIDENCE AND PROCEDURE.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(d) Defences/683. Effect of compensation orders on a subsequent award of damages in civil proceedings.

### **683. Effect of compensation orders on a subsequent award of damages in civil proceedings.**

Where a compensation order<sup>1</sup> or a service compensation order or award<sup>2</sup> has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect of it subsequently fails to be determined, the damages in the civil proceedings are to be assessed without reference to the compensation order or award<sup>3</sup>. However, the plaintiff may recover only an amount equal to the aggregate of: (1) any amount by which the damages exceed compensation; and (2) a sum equal to any portion of the compensation which he fails to recover<sup>4</sup>.

The plaintiff may not enforce the judgment, so far as it relates to the latter amount, without the leave of the court<sup>5</sup>.

1 As to compensation orders see PARA 682 ante.

2 'Service compensation order or award' means: (1) an order requiring the payment of compensation under the Army Act 1955 Sch 5A para 11; the Air Force Act 1955 Sch 5A; or Naval Discipline Act 1957 Sch 4A; or (2) an award of stoppages payable by way of compensation under any of those Acts: Powers of Criminal Courts Act 1973 s 38(3) (s 38(3) added by the Armed Forces Act 1991 s 26, Sch 2 para 9(1)(c)).

3 Powers of Criminal Courts Act 1973 s 38(1), (2) (s 38(1), (2) substituted by the Criminal Justice Act 1988 s 105; and amended by the Armed Forces Act 1991 Sch 2 para 9(1)(c)).

4 Powers of Criminal Courts Act 1973 s 38(2) (as substituted and amended: see note 3 supra). Since the enactment of the CPR, plaintiffs are now known as claimants: see CIVIL PROCEDURE.

5 Powers of Criminal Courts Act 1973 s 38(2) (as substituted and amended: see note 3 supra).

## UPDATE

### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

### **683 Effect of compensation orders on a subsequent award of damages in civil proceedings**

TEXT AND NOTES--1973 Act s 38 (as substituted and amended) now Powers of Criminal Courts (Sentencing) Act 2000 s 134 (amended by the Armed Forces Act 2006 Sch 16 para 167).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(C) Trespass to Goods/(e) Effect of Settlement or Judgment/684. Extinction of title on satisfaction of claim for damages.

#### *(e) Effect of Settlement or Judgment*

#### **684. Extinction of title on satisfaction of claim for damages.**

Where damages for trespass to goods<sup>1</sup> are, or would fall to be, assessed on the footing that the claimant is being compensated for the whole of his interest in the goods<sup>2</sup>, or for the whole of his interest in the goods subject to a reduction for contributory negligence<sup>3</sup>, payment of the assessed damages, under all heads, or settlement of a claim for damages<sup>4</sup> for the wrong, under all heads, extinguishes the claimant's title to that interest<sup>5</sup>. However, this provision does not apply where damages are assessed on the footing that the claimant is being compensated for the whole of his interest in the goods, but the damages paid are limited to some lesser amount by virtue of any enactment or rule of law<sup>6</sup>. Moreover, these rules have effect subject to any agreement varying the respective rights of the parties to the agreement, and, where the claim is made in court proceedings, subject to any order of the court<sup>7</sup>.

1 As to damages see PARA 671 ante.

2 Torts (Interference with Goods) Act 1977 s 5(1)(a). See also *Macaulay v Screenkarn Ltd* [1987] FSR 257; and PARA 655 note 6 ante.

3 Torts (Interference with Goods) Act 1977 s 5(1)(b). See also *Rose Records v Motown Record Corp* [1983] FSR 361; and PARA 655 note 5 ante. Contributory negligence is no defence in proceedings founded on intentional trespass to goods: see the Torts (Interference with Goods) Act 1977 s 11(1); and PARA 680 ante.

4 As to references to the settlement of a claim see *ibid* s 5(2); and PARA 655 note 4 ante. The rules as to extinction of title on satisfaction of a claim for damages for trespass to goods are the same as the rules that apply to conversion or other wrongful interference.

5 *Ibid* s 5(1). Where the claimant accounts over to another person (the 'third party') under s 7(3) (as to which see PARA 637 ante), so as to compensate, under all heads, the third party for the whole of his interest in the goods, the third party's title to that interest is extinguished: s 5(4).

6 *Ibid* s 5(3).

7 *Ibid* s 5(5). Apart from the provisions of s 5, since the claim of trespass is based on possession and not on property (see PARAS 659, 662 ante), the judgment in the claim does not affect the property in the goods.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(ii) Wrongs to Property/D. WRONGFUL INTERFERENCE WITH GOODS/(D) Damage to Reversionary Interests/685. Claim for damage to reversionary interest.

### (D) DAMAGE TO REVERSIONARY INTERESTS

#### 685. Claim for damage to reversionary interest.

A person who has only a deferred right to the possession of a chattel<sup>1</sup> when an unauthorised act is committed upon it<sup>2</sup>, and who lacks both possession and the immediate right to possess at that time<sup>3</sup>, may nevertheless sue for damage to his reversionary interest<sup>4</sup>. For such a claim to be brought, the claimant must have a legal or common law interest in the chattel and not a mere equitable interest<sup>5</sup>. The unauthorised act must impair the claimant's interest in some permanent or enduring manner<sup>6</sup>, and the claimant must suffer his loss in his capacity as reversionary owner of the chattel, rather than in some other capacity, such as that of a person having the benefit of a contract for the use of the chattel<sup>7</sup>. The act which constitutes the wrong may be committed either deliberately or negligently and may cause either physical impairment of the chattel or a deprivation of the claimant's possession<sup>8</sup>. Where goods have been stolen or lost, the requirement of permanent or enduring damage to a reversionary interest is satisfied once there is no realistic prospect that the claimant will recover the goods<sup>9</sup>.

The claim for damage to a reversionary interest is a claim for wrongful interference with goods<sup>10</sup> and attracts the substantive and procedural provisions of the Torts (Interference with Goods) Act 1977, which govern this claim in substantially the same way as a claim for conversion<sup>11</sup>, trespass to goods<sup>12</sup> or negligence affecting goods<sup>13</sup>. These provisions relate to the form of judgment where goods are detained<sup>14</sup>; interlocutory relief where goods are detained<sup>15</sup>; the extinction of title on satisfaction of a claim for damages<sup>16</sup>; allowances for improvement of the goods<sup>17</sup>; double liability<sup>18</sup>; competing right to the goods<sup>19</sup>; and concurrent claims<sup>20</sup>. Subject to the statutory provisions, damages are normally assessed on a compensatory basis, by reference to

the extent to which the value of the reversionary interest has depreciated in consequence of the wrong<sup>21</sup>. In appropriate cases, the claimant may be awarded the cost of replacing or repairing the chattel, where either of those measures would be a reasonable response to the wrong in question and most suitably compensate him for his loss<sup>22</sup>.

1 Eg a lessor-owner who has leased the chattel for a fixed term, the unauthorised act occurring during the continuance of that term; or a landlord who has leased furnished premises, the tenant thereby being entitled to possession of the furniture for a fixed period, which period is still current at the time of the wrong: see *Gordon v Harper* (1796) 7 TR 9; and PARA 559 ante.

2 Where the goods are in the possession of a bailee at the time of the act, and the act is committed by a person other than the bailor or bailee, it is an open question whether the act must be unauthorised by the bailee as well as by the bailor in order for the claim for reversionary interest to be brought, or whether the bailee's consent is a defence to the claim even though the bailor does not consent. On balance it appears sufficient that the act is unauthorised by the bailor.

3 The claim for damage to a reversionary interest originated as a special action on the case to assist claimants who did not satisfy the requirement of the torts of conversion (see PARA 662 et seq ante) and trespass to goods (see PARA 662 et seq ante) that a claim for those torts lies only in favour of a person having possession or an immediate right of possession at the time of the wrong. It also supplements the requirement of the tort of negligence that the claimant must show either legal ownership or possessory title at the time of the wrong: see *Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd, The Aliakmon* [1986] AC 785 at 809, [1986] 2 All ER 145 at 149, HL, per Lord Brandon of Oakbrook; *Transcontainer Express Ltd v Custodian Security Ltd* [1988] 1 Lloyd's Rep 128 at 138, CA, per Slade LJ.

4 *Hall v Pickard* (1812) 3 Camp 187; *Dean v Whittaker* (1824) 1 C & P 347; *Tancred v Allgood* (1859) 4 H & N 438; *Mears v London and South Western Rly Co* (1862) 11 CBNS 850; *Moukataff v British Overseas Airways Corpn Ltd* [1967] 1 Lloyd's Rep 396; *Mukibi v Bhavsar* [1967] EA 473. See also *Candlewood Navigation Corpn Ltd v Mitsui OSK Lines Ltd, The Mineral Transporter, The Ibaraki Maru* [1986] AC 1, [1985] 2 All ER 935, PC. See generally Tettenborn 'Reversionary Damage to Chattels' (1994) 53 CLJ 326; Palmer, *Bailment* (2nd Edn, 1991) p 256-259.

5 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 703, [1998] 2 BCLC 659 at 691, CA, per Hobhouse LJ, and at 687 and 673 per Mummery LJ. A mere equitable interest, such as that of a beneficiary under a trust, will not suffice to ground the claim, and the equitable owner must join the legal owner (for example, his trustee) in order to bring the claim, but an equitable interest coupled with a deferred right of possession may suffice for this purpose: *MCC Proceeds Inc v Lehman Bros International (Europe)* supra. Whereas in most cases the claimant in a claim for damage to a reversionary interest will be the residual legal owner, such as an owner-lessor of a chattel leased for a fixed term, it appears that the claim may be brought by any person who has a deferred right to the possession of goods, irrespective of whether that right of possession is combined with residual legal ownership: for example, a sub-bailor whose right of possession against the sub-bailee is suspended at the time of the wrong, but who seeks to recover damages for impairment of his reversionary interest from an independent tortfeasor who has committed an unauthorised act against the chattel while it is in the possession of the sub-bailee. Cf *The Hamburg Star* [1994] 1 Lloyd's Rep 399 (actions for negligence and breach of bailment); Palmer 'Possessory Title' in Palmer and McKendrick (eds) *Interests in Goods* (2nd Edn, 1998) Ch 3 p 63 et seq.

6 *Mears v London and South Western Rly Co* (1862) 11 CBNS 850; *Candlewood Navigation Corpn Ltd v Mitsui OSK Lines Ltd, The Mineral Transporter, The Ibaraki Maru* [1986] AC 1, [1985] 2 All ER 935, PC.

7 *Candlewood Navigation Corpn Ltd v Mitsui OSK Lines Ltd, The Mineral Transporter, The Ibaraki Maru* [1986] AC 1, [1985] 2 All ER 935, PC (where the respondents, owners of vessel which they chartered to others under a bareboat charter, took time charter back from bareboat charterers; vessel damaged in collision with appellant's vessel; respondents sued to recover economic loss (hire paid and loss of profits) caused by vessel's being out of action; held that the respondents could not recover because they had no relevant interest in the vessel at the date of the wrong; their reversionary interest was irrelevant because the respondents suffered no loss in their capacity as owners and holders of that interest, but in their capacity as time charterers, although the position might have been otherwise had there been damage to the reversionary interest itself, for example, if the bareboat charterers had failed to repair the vessel). See also note 8 infra.

8 It may be preferable to regard the claim for damage to the reversionary interest as remedying, not a single composite tort, but three distinct torts, each of which respectively corresponds to one of the nominate torts of conversion, trespass to goods or negligence, but with the difference in each case that the plaintiff lacks the necessary immediate right of possession to sue for one of those nominate torts: see Tettenborn 'Reversionary Damage to Chattels' (1994) 53 CLJ 326.

9 See *Moukataff v British Overseas Airways Corp Ltd* [1967] 1 Lloyd's Rep 396. See also *Mukibi v Bhavsar* [1967] EA 473. Where the claimant has only a limited possessory interest falling short of full residual ownership, this requirement is presumably met if there is no realistic prospect that he will recover the goods in time for that interest to be fully enjoyed.

10 *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 685-686, [1992] 2 BCLC 659 at 671, CA, per Mummery LJ (who appears to approve the undisputed assertion by counsel for the plaintiffs that the action qualifies under the Torts (Interference with Goods) Act 1977 s 1(d)); and see at 703 and at 691 per Hobhouse LJ.

11 As to conversion see PARAS 548-658 ante.

12 As to trespass to goods see PARAS 659-684 ante.

13 As to negligence affecting goods see PARA 686 post.

14 See the Torts (Interference with Goods) Act 1977 s 3; and PARAS 653, 672 ante.

15 See *ibid* s 4 (as amended); and PARAS 654, 673 ante.

16 See *ibid* s 5; and PARA 686 text and notes 11-14 post.

17 See *ibid* s 6; and PARAS 623-624 and 671 ante.

18 See *ibid* s 7; and PARAS 637, 676 ante.

19 See *ibid* s 8; and PARAS 638, 644, 678 ante.

20 See *ibid* s 9 (as amended); and PARAS 614, 675 ante.

21 *Tancred v Allgood* (1859) 4 H & N 438; *Matthews v Eastley* (13 March 1998, unreported), NSW SC. A similar measure of damages is awarded in claims for damage to a reversionary interest in land: *Hunter v Canary Wharf Ltd* [1997] AC 655 at 688, 692, [1997] 2 All ER 426 at 435, 438, HL, per Lord Goff of Chieveley, at 707 and 452 per Lord Hoffmann, and at 724 and 468 per Lord Hope of Craighead (cf at 712 and 456 per Lord Cooke of Thorndon) (nuisance). See also *Matthews v Eastley* *supra* (conduct equivalent to trespass against reversionary interest in land, and conversion of tree branches). Damages in a claim for damage to a reversionary interest will probably follow the measure which would be awarded under the nominate tort (conversion, trespass to goods, negligence etc) to which the act for damage to the reversionary interest most closely approximates on its facts. That may lead to the award of some special measure in the particular circumstances. Where, for example, the unauthorised act of the defendant takes the form of a wrongful taking and disposal, such as would constitute an irreversible conversion if the claimant had enjoyed the necessary possession or immediate right to possess at the time of the wrong, the measure of damages in a claim for damage to the reversionary interest may (as in the case of conversion itself) be the value of the goods at the date of the conversion, less in this case the value of any outstanding interest in the immediate possessor. Cf *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1991] 2 All ER 129, [1990] 1 WLR 409, PC (conversion); and see PARA 621 ante.

22 See also PARA 671 ante; and DAMAGES vol 12(1) (Reissue) PARAS 860, 864, 981.

## UPDATE

### 542-686 Wrongful Interference with Goods

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

## (E) NEGLIGENCE AND OTHER TORTS RELATING TO GOODS

### **686. Damage to goods or to an interest in goods.**

Certain changes in substantive law and procedure relating to negligence and other torts in so far as they result in damage to goods<sup>1</sup> or to an interest in goods have been made by the Torts (Interference with Goods) Act 1977<sup>2</sup>. These changes relate to the form of judgment where goods are detained<sup>3</sup>; interlocutory relief where goods are detained<sup>4</sup>; the extinction of title on satisfaction of a claim for damages<sup>5</sup>; allowances for improvement of the goods<sup>6</sup>; double liability<sup>7</sup>; competing rights to the goods<sup>8</sup>; and concurrent actions<sup>9</sup>. The changes are the same as those discussed in relation to conversion and trespass to goods<sup>10</sup>.

Where damages for wrongful interference with goods are assessed on the footing that the claimant is being compensated for the whole of his interest in the goods<sup>11</sup>, or for the whole of his interest in the goods subject to a reduction for contributory negligence<sup>12</sup>, payment of the assessed damages (under all heads) or, as the case may be, settlement<sup>13</sup> of the claim for damages for the wrong (under all heads), extinguishes the claimant's title to that interest<sup>14</sup>.

1 For examples see the claim for damage to a reversionary interest (PARA 685 ante); rescue and pound breach (see TORT vol 97 (2010) PARA 604; and DISTRESS vol 13 (2007 Reissue) PARAS 1069-1075); and replevin (see DISTRESS vol 13 (2007 Reissue) PARAS 1081-1089).

2 See the Torts (Interference with Goods) Act 1977 s 1 (as amended); and PARA 545 ante.

3 See *ibid* s 3; and PARAS 653, 672 ante.

4 See *ibid* s 4 (as amended); and PARAS 654, 673 ante.

5 See *ibid* s 5; text and notes 11-14 *infra*; and PARAS 655, 684 ante.

6 See *ibid* s 6; and PARAS 623-624, 671 ante.

7 See *ibid* s 7; and PARAS 637, 676 ante.

8 See *ibid* s 8; and PARAS 638, 644, 678 ante.

9 See *ibid* s 9 (as amended); and PARAS 614, 675 ante.

10 See PARA 543 et seq *ante*. *Ibid* ss 3-9 (as amended), are expressed to relate to claims for 'wrongful interference'. For the meaning of 'wrongful interference' see PARA 545 text and notes 2-5 *ante*. As to the scope of the Torts (Interference with Goods) Act 1977 see PARA 545 *ante*. As to the changes introduced by the Torts (Interference with Goods) Act 1977 see the text to notes 3-9 *supra*.

11 *Ibid* s 5(1)(a).

12 *Ibid* s 5(1)(b). Note that contributory negligence is not a defence to a claim for conversion or intentional trespass to goods, but will be a defence to the other wrongs falling within the definition of 'wrongful interference' (see PARAS 543, 545 *ante*).

13 As to the meaning of 'settlement' see PARA 655 note 4 *ante*.

14 Torts (Interference with Goods) Act 1977 s 5(1). See further s 5(3)-(5); and PARA 655 *ante*.

### **UPDATE**

#### **542-686 Wrongful Interference with Goods**

For new procedural rules concerning parties in claims for wrongful interference with goods, and the power of the court to order, in certain circumstances, that certain

persons be deprived of the right to bring a claim against the defendant, see CPR 19.5A (added by SI 2001/256).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/2. SPECIFIC TORTS/(5) TRESPASS AND ASSOCIATED TORTS/(iii) Unfair Practices

### **(iii) Unfair Practices**

#### **UPDATE**

#### **687-800 Unfair Practices**

Material relating to these paragraphs has been revised and published under the title TORT vol 97 (2010).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/3. TORT AND EMPLOYMENT

### **3. TORT AND EMPLOYMENT**

#### **UPDATE**

#### **801-843 Tort and Employment**

Material relating to this part has been revised and published under the title TORT vol 97 (2010).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/4. PUBLIC OFFICERS AND PUBLIC AUTHORITIES

### **4. PUBLIC OFFICERS AND PUBLIC AUTHORITIES**

#### **UPDATE**

#### **844-846 Public Officers and Public Authorities**

Material relating to these paragraphs has been revised and published under the title TORT vol 97 (2010).

Halsbury's Laws of England/TORT (VOLUME 45(2) (REISSUE))/5. TORT AND HUMAN RIGHTS

### **5. TORT AND HUMAN RIGHTS**

#### **UPDATE**

**847-849 Tort and Human Rights**

Material relating to these paragraphs has been revised and published under the title  
TORT vol 97 (2010).